

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 23, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The Regular Meeting of June 23, 2003 was opened by Mayor Daniel Hughes on Monday, June 23, 2003, at 6:30 p.m..

Council members present at the meeting: Mayor Daniel Hughes, Vice Mayor Terry Cain, Howard Rynearson - Council member, Bill Van Duzer - Council member and Bill Thomas - Council member.

Excused absence from meeting: None.

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Damon Grant, Attorney Dick Roosa, Dan Folke and Bill Spikowski.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REVEREND DICK TAFEL, NEW CHURCH OF SWFL

The invocation was given by the Reverend Dick Tafel.

IV. PUBLIC COMMENT

Frank Schilling, 6672 Estero Blvd. #A210, FMB came forward. The Fort Myers Beach toll plan is not practical to make March's traffic equal to May. The Fort Myers toll ring has not been tried in North America nor has it been tried anywhere with a conversion to motorists to a new park and ride system. The March 2003 CRSPE study shows a \$4.00 toll with 37.5% not making a trip to the beach. The owners and businesses must assess this information. The CRSPE analysis currently shows the highest revenue at 5.3 million and an operating cost of six million. The plan is exceptionally complex and highly risky and does not cover the expenses and liabilities. There is no mention of all up front cost that will be needed. The initial modeling for the underpass/overpass shows Estero traffic from 2 m.p.h. to 19 m.p.h. and CRSPE will evaluate this information further. He suggested a 1,000 car conversion of getting people to get off of the island from the north end to go to the south end, which would exceed the 9% traffic improvement as projected by CRSPE. This will be studied further by CRSPE and could begin as early as next year. CRSPE agrees both the bed tax or an annual drive can be possible. The bed tax will be analyzed only. Many other options exist that have much merit and should be evaluated. John Davis would like the Lee County Commissioners to approve a joint meeting with CRSPE and himself to validate the numbers. He suggested this Town Council should address a requesting letter to the Lee County Commissioners to make a validation meeting possible. He questioned when this will happen?

Council member Thomas suggested the Town Council request a letter to go to the Lee County Commissioners to set up a meeting with CRSPE and Frank Schilling to review the numbers. The actual numbers can be reported by to this Town Council.

Town Manager Segal-George added the meeting was declined by John Davis.

Council member Van Duzer would like the opportunity to consider this matter and make a conclusion during the Member Items and Reports.

V. CONSENT AGENDA

A. Approval of June 2, 2003 minutes

B. Approval of contract for audit services: Town of Fort Myers Beach

C. Approval of contract for audit services: Town of FMB Public Works

D. Contract for Services - Robert Gurnham

E. Bill Spikowski Contract Renewal

F. Recognition of 5K swimmers

G. Recognition of Beach Swim Club Coach, Jennifer Kaestner

Mayor Hughes pulled item C. It was discussed this matter will need to be addressed as the Fort Myers Beach Public Works in the capacity of the Board of Directors.

Mayor Hughes called the meeting for the Fort Myers Beach Board of Directors of the Fort Myers Beach Public Works Services, Inc.

MOTION: Made by Howard Rynearson and seconded by Bill Thomas to approve the Contract for Audit Services for the Town of Fort Myers Beach Public Works Services, Inc.

VOTE: Motion passes unanimously.

Mayor Hughes adjourned the Board of Directors meeting for the Fort Myers Beach Works Services, Inc. and returned as the Town Council for the Town of Fort Myers Beach.

Mayor Hughes pulled items F and G from the Consent Agenda.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to approve Consent Agenda Items A, B, D and E.

VOTE: Motion passes unanimously.

Mayor Hughes began with Item F - Recognition of the 5K swimmers. Two young ladies are present who participated in the Estero Island Challenge. He asked them to come forward (Applause was given).

Jennifer Kaestner was asked to come forward. Mayor Hughes indicated that Jennifer has been the coach of the Fort Myers Beach Club since its inception. A plaque was read and provided to Jennifer Kaestner. Congratulations and applause were given.

Michael Lund, Chairman of the Pool Foundation, came forward. Jennifer Kaestner was also a member of the pool foundation when it first began. One of the goals early on was to include getting the young people to use the pool. Jennifer saw the need to initiate a swim club on the beach to facilitate those children who wanted to get into some serious swimming. He gave her much credit sticking to this program without much recognition. Jennifer is dedicated and he would like everyone to appreciate the work she has done through the years. (Applause was given).

Mayor Hughes expressed "Good Luck" to Jennifer and her team.

VII. ADMINISTRATIVE AGENDA

A. Public Hearing: Alarm Ordinance 03-08

Mayor Hughes read the ordinance. He asked if anyone from the public wished to address the Council? No one came forward.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to adopt Alarm Ordinance 03-08.

Discussion: Council member Bill Van Duzer commented he has heard negative discussions pertaining to this ordinance. He has considered it carefully and commented on a particular case he experienced one Thanksgiving holiday. He is in favor of this ordinance due to this experience. If people will register and pay the fee these situations can be resolved much easier.

Mayor Hughes agrees with the ordinance as well.

VOTE: Role Call - Council member Bill Van Duzer, aye - Council member Bill Thomas, aye - Council member Howard Rynearson, aye - Mayor Daniel Hughes, aye and Vice Mayor Terry Cain, aye. The ordinance is

unanimously approved.

B. Spring Election Dates

Mayor Hughes reviewed a memo was received from Julia Campbell, which is self explanatory.

Julia Campbell reported a conversation took place with the Qualifying Officer for the Lee County Division of Elections. She indicated the Town was surprised to find they would be having elections on February 3, instead of March 9. The reason these will take place is due to an ordinance created by the Town to avoid a December runoff. This puts the Primary on February 3rd with the qualifying dates of December 15th to December 19th. The Council may want to consider modifying the Ordinance 01-06 to be in line with the City of Bonita Springs ordinance.

Mayor Hughes added additional background. The reason the ordinance was adopted was due to the original charter, which provided the election would be held in November with a runoff in December. In December, the County has no other elections. The intent of March was to get people out on the Presidential Election Day plus save money by having it coincide with the Presidential Primary.

The Mayor and the Town Attorney agree the general election should be held in March with a runoff taking place in April. The Mayor would like the language to be added "terms of a member shall begin the first Council meeting following the general election or following the runoff election, if there is one."

Mayor Hughes recommended Counsel adjust Ordinance 01-06 to modify the general election to be held the second Tuesday in March and draft a modification to deal with when the terms of the members commence. If there is a runoff the Town Council will not be reorganized until the meeting after the runoff.

C. Newton Property - Review of Management Plan, TPL Service Agreement and Option Agreement

Dan Folke reported three items are up for review. He commented on the Management Plan and indicated they did receive a letter today from Florida Communities Trust with an acceptance of the Management Plan. This is another step toward acquiring the property. He commented on the property location and indicated there are three existing residences on the property including a historic cottage. The Management Plan includes two conceptual master site plans with both including restroom facilities, public meeting space, picnic areas, short nature walk, beach volleyball and shuffleboard courts. Each plan has a small parking lot for 12 to 15 cars. The park is seen as an Oasis Park with the majority of the uses arriving by foot as well as by bike and Trolley service. A sidewalk and Trolley stop is also planned for clear, safe public access. Bike racks are planned to be onsite. This will involve a systematic gradual removal of the exotic invasive plants onsite. This will be combined with the gradual restoration of three natural communities. A strong historic and cultural preservation element exists. The historic cottage was built around 1944. The cottage will be preserved under the Town's historic preservation ordinance. This will be the fourth property preserved over this last year. The cottage will be the site of a small museum, which will present information on the Newton's. The Town has received both 2.3 million to obtain the property and a \$500,000.00 grant from the Tourist Development Council to pay for the development of the plan. A public workshop was held on April 2, 2003 with regard to the Newton Park Project. This was a successful workshop and several of the ideas were presented from the neighbors and other interested parties. The workshop was a valuable tool.

Dan further explained there was quite a range of consultant fees (\$4,500.00 to over \$20,000.00) to complete the Management Plan. The Town went with the low bid and has been very pleased with their consultant who is Lou Scruggs. He is an employee of the Department of Environmental Protection. He was proud to report they came in right at the budget of \$4,500.00. As of today, there is an approved FCT plan. He asked for comments and changes at this time.

Town Manager Segal-George added that this is still conceptual. As the property is purchased and the actual planning is started the document can be changed in the future after consultation with Florida Communities Trust. This was an issue with the Mound House and she pointed out nothing is in stone with regard to the plan. A plan must be developed before the property can be purchased.

Vice Mayor Cain read the plan and commented on the thorough plan by Lou Scruggs. She is in agreement with the plan as presented.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Howard Rynearson to accept the Newton Beach Park Management Plan.

Discussion: Mayor Hughes raised some issues pertaining to platted alleys'. Dan Folke replied there is a platted alley that will provide access to a home that will be constructed next door. He commented that it would be appropriate to share the access point to the park with this alleyway.

Mayor Hughes commented on the angled parking on the Strandview side. Dan Folke replied this plan does not call for any changes in the public right of way in the beach access.

VOTE: Motion passes unanimously.

Dan Folke reviewed several week's back a draft option agreement was provided to the Town Council. Since this time, working with Florida Communities Trust and TPL some changes have been made. A recommendation is being made to the service agreement the Town has with Trust for Public Lands. In the last option agreement there were two purchase prices. One with the life estate and one without the life estate. He indicated the life estate has a value of \$116,000.00. FCT will not have an option agreement with two purchase prices. The agreement with TPL is that the Town will pay what they pay for the property. The staff is recommending the original purchase price of \$2,560,000.00. In the event TPL closes at \$2.4 million the Town will waive the \$100,000.00 service fee.

Mayor Hughes questioned the Town Attorney if he was comfortable with the amendment as proposed? Town Attorney Dick Roosa replied that he was comfortable with this amendment.

MOTION: Made by Council member Howard Ryneerson and seconded by Vice Mayor Terry Cain to accept staff's recommendation and authorize and approve the execution of the amendment of the Professional Services Agreement.

Mayor Hughes recognized Mr. and Mrs. Erickson for being present this evening. Mr. Erickson commented that Ellie Newton is 104 years of age and may not go on living too much longer. This would be the only reason a special provision would be needed.

D. Alternating Light

Deputy Town Manager Gucciardo reported the project is not moving forward as quickly as anticipated. Hopefully, there will be some significant progress over the summer. Over the next few weeks, Town staff is hopeful two agreements will come forward. One agreement will allow for the fronting of dollars for this project and seek reimbursement in the 2004/05 fiscal year in the amount of approximately \$125,000.00. If this agreement comes forward during the time period, the Council is not in session the Town staff wanted approval to enter into the agreement to move forward. The second agreement would be between the Town and the County, which would lay out the obligation of the Town to provide the funds for the project and the obligation on the part of the County to do the work themselves or bid it out. Town staff has hopes the permanent alternating light issue will be installed prior to the next peak traffic season. Based on conversations this may not happen by this time. Town staff will do their best to push the issue.

Council member Ryneerson had a conversation with John Davis who feels 80% confident the Town of Fort Myers Beach will not receive this light prior to July of next year. He also expressed this at the last Traffic Committee meeting. John Davis suggested they should work toward a temporary situation for the upcoming year. Council member Ryneerson would like to see this cost absorbed by the County and if it will not be absorbed then the Town of Fort Myers Beach should consider paying one-half of the cost.

Mayor Hughes is unhappy with this possible result. He does not understand the difference between putting up a permanent sign or a temporary sign. What engineering must be developed to put a light up permanently that has been put up already two times.

Council member Van Duzer commented the present pole is not designed to support the traffic light during storm seasons. He does feel authorization needs to be given to Town staff to establish an agreement with the state and the County to get the work done. If this cannot be done prior to the start of the next upcoming season, it will need to be placed on a temporary basis.

Vice Mayor Cain feels this must move forward and be expedited as quickly as possible. She would like to see the agreement made in good faith with the hopes of the light being up by next season.

Town Manager Segal-George reported one of the last year hangups related to cost. The temporary fix cost discussions caused the delay. Realistically they must move forward and understand if the temporary light must take place the Town of Fort Myers Beach must pay for it. She does not believe the County will absorb this cost. Staff needs direction from the Council to work on this matter and proceed forward if the temporary fix must be paid exclusively by the Town.

Mayor Hughes would like the County to be asked to pay, because the Town of Fort Myers Beach did pay for it this year. He does not want to be on record stating they will pay for it without first trying to get the County to pay the cost first.

Council member Thomas agrees with the Town Manager and feels the Town of Fort Myers Beach will need to pay the cost of the temporary light. The Town should be prepared, so a delay will not occur for this upcoming year.

Mayor Hughes commented on the gas tax allocation and questioned if the extra money over \$200,00.00 could be utilized? Deputy Town Manager Gucciardo is unsure if this would fit into the definition of capacity related.

Council member Rynearson does not feel authority needs to be given to spend the \$30,000.00 until the fall and does not feel the County will act that quickly. They should move forward with the contracts at this time and go forward after the summer break.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to authorize the staff to move forward with both the state and county planning, design and installation of the permanent alternating light.

VOTE: Motion passes unanimously.

E. Status of Gas Tax Allocation discussion

Deputy Town Manager Gucciardo: I tried in this memo to bring you up to date on the continuing talks on the gas tax allocations. I copied for you the memo I did at the last meeting, which laid out some of the options and some of the discussions we have been having up to that point and to show you the changes which have occurred in the thinking and in the formal document since our last meeting with the DOT officials on June the 9th. Also, you have a copy of the draft agreement, draft interlocal as well as a copy of the Florida Statute that defines eligible uses for the gas tax dollars. Finally, in the memo is also a brief discussion by Chris Swenson on his thoughts on the ongoing discussions also. There is no reason to make a final decision tonight, although at some point tonight or at the next meeting we will ask you to make a final determination on which direction you want to go on this item. The two options, as far as I know, are to conclude settlement negotiations with the County staff and enter into an interlocal agreement between the Town Council and the Board of County Commissioners that would then define the allocation of gas tax dollars and the transfer of the supplemental dollars for a two-year period. Option two would be to break off the negotiations and fall back on the possibility of litigation. Both the County and Town have had legal opinions drafted on their views on how the gas tax allocation should be determined as a result of an interpretation of the statutes. We have an opinion obviously that is dramatically different than what the County has. We had hoped to be able to avoid litigating this issue, although at this point it still needs to be considered as an option. In the memo, I tried to lay out some of the areas that are still troubling, as well as some of the areas that have been concluded and probably acceptable from the Town's point of view. Tonight we are looking for more feedback from the Council on where you think this might be going.

Council member Thomas: Why don't you want this settled tonight? Why were you delaying this until the last meeting?

Deputy Town Manager Gucciardo: I am not saying that this shouldn't be, but is an option of the Council to either decide tonight or at the last meeting if there are other issues that come up and need to be pursued.

Council member Thomas: We do not expect any additional information between tonight and our next meeting?

Deputy Town Manager Gucciardo: Not from the County, no.

Mayor Hughes: Well, here we are again with the County. I am going to express my view. I do not like it and I think to enter into an agreement that is based on center line miles and a base population

factor can be nothing but negative for us, because our center miles will never increase and our proportion of population of the Town of Fort Myers Beach to the population of the unincorporated area will consistently decrease, so that our factor can only go down under this formula. I appreciate what staff has done and worked very hard on this thing, but I am very disappointed with the position of the County on this matter. They are reducing us to about one-third of what we received in the past. We have a legal opinion that says they are wrong. I think they are wrong legally and this is my view. This is all I am going to say right now and would like to hear from the rest of the Council.

Vice Mayor Cain: Well, here we are in another situation. Do we negotiate or do we litigate? We have had legal opinions before that I thought were excellent when we have gone to litigation. I have learned while I have sat here, and I have always been the one to push to litigate, litigate, that it sometimes does not work out to our advantage. I am having a real hard time with this one. A very hard time, because I do not like it and do not like anything about it. I do not like that we are down to less than 1% or .97%. Exactly what you said Dan by going by center lane and population is not good for a seven mile long island that has a population during season that doubles, triples and also takes care of a lot of company which happens on the other side of the bridge. I think because we are different I think we should have a different formula. We are the County's playground and we are being punished. I find that we are being punished for being the County's playground and I find it very offensive. John can I ask you a question? As far as negotiating, how much further can we go as far as negotiation at this point?

Deputy Town Manager Gucciardo: I really do not think there is any movement possible on the County's side in terms of that formula. I do not want to leave the Council with the impression that the County staff and I have been dealing with all punitive or have feelings of malice toward the Town in this negotiation. I really believe that from their perspective what they are trying to achieve makes sense and is reasonable, again from their perspective. They are trying to come up with a formula, a template for a formula, they can use for all municipalities. Not only the ones who are up for negotiations now for contracts, but from their point of view from cities that already have agreements that may come up for renegotiations and for new cities that may come up on line. There are always the thoughts about Estero incorporating or Lehigh incorporating. From their point of view, looking at what had been done in the past where separate negotiations lead to separate formulas and different outcomes, their main impulse is to find some formula/template they can use consistently. Given this a mix of lane miles and population does make sense. As you correctly pointed out we are significantly different in a lot of different ways then other municipalities both in limited size, limited population and in the fact that we do service a greater proportion of the County population, in terms of their travel needs and recreational needs. In that sense you have the conflicts here. Their looking for consistency and we are trying to point out this is not a cookie cutter situation. So, while the negotiations I do not think have a whole lot of room from growth because of this, I do not want to characterize this as being mean spirited or negative or conflicting in this sense. I do feel they have done their best in terms of trying to put together a formula that works for us in at least the short run for the two-year period, because they have put the supplemental dollars on the table for us, but I do think there is a very legitimate concern on our part beyond those two years. This probably does not work well for us.

Vice Mayor Cain: I had a question in regard to what Dan said and had not thought of this. In the future, is this a possibility of going down in regard to the future of the County increasing the population and so therefore proportionately we look like we have less?

Deputy Town Manager Gucciardo: I do not think this is a possibility, but is an absolute.

Mayor Hughes: There is no way it will not go down, because we cannot add any more miles and our population will obviously be proportionally less. Just look at what is going on in South Fort Myers. All the building going on over there.

Deputy Town Manager Gucciardo: There has been discussion that the current agreement would call for a percentage allocation and then supplemental dollars beyond this allocation to address capacity needs. This would bring us to the total dollar amount we received last year. There has been discussion that beyond the two-year agreement there may be some room for supplemental dollars that would assist us in addressing our capacity needs. The problem I have with this is while this may be the intention at this point and while this may be a good faith intention at this point, we do not know nor do they know what the situation countywide will be in two years, four, or five years. Even with the best intentions, if we do not have a legal right to those dollars they may not be in a position to be able to give them to us. Whether or not they want to or not. In other words, if someone else has a superior legal claim, even if the commissioners or staff level would like to assist us they may not be able to.

Council member Ryneerson: Mr. Roosa, if we accepted this the way it is with the two years and we come back and negotiate in the two years and we are not happy, the data you have today that you would take into a lawsuit, would it be feasible to use then or would it not? Would it be feasible to use the same data that Miami has gathered?

Deputy Town Manager Gucciardo: If I can interrupt, I think the question is, rather than litigate now could we enter into an agreement for a two-year period, see what happens over the two-year period and if we are unhappy at the renegotiation point could we litigate the issue at this point? Have we conceded anything by entering into an agreement now?

Attorney Dick Roosa: I think that would weaken some of our arguments.

Council member Ryneerson: A lot?

Mayor Hughes: I do too. The court is going to say you accepted this for two years.

Attorney Dick Roosa: Probably so, because part of the arguments are based upon our willingness to accept less than we were entitled to with the first round.

Mayor Hughes: Unless we entered into the agreement we could have some kind of clause that we are accepting it with reluctance and without prejudice and throwing ourselves on the floor kicking and screaming. Would this help?

Council member Thomas: I agree with you. I think Fort Myers Beach is getting the short end on this deal again. The County seems to have the upper hand on issues like this. Now, as I look at this with the offer of .97, which comes to \$223,000.00, plus the \$445,000.00 for other programs possibly for the next two years, if we go to litigation and we lose there is a strong possibility we would get the formula of .50 (\$122,000.00) and that would give us a short fall of the original \$223,000.00 and the \$445,000.00 each year and we could stand to lose one million dollars if we went to litigation. The original offer of .97 and what they could give us at .50. So I think the Council should take careful consideration before they vote and go to litigation on this.

Mayor Hughes: I agree it needs careful consideration, but this is if we lose.

Council member Ryneerson: John, did I gather in what you were saying, I have heard this elsewhere, the more money we spend on the transportation and roads will this effect our negotiations in two years? Will it not help us if we take the \$400,000.00 left over each year that they said they would give us if we spent it on roads and transportation and would this not help us with negotiations in two years? For more money?

Deputy Town Manager Gucciardo: I do not see how this will help with negotiations.

Council member Ryneerson: I am hearing also from the County that they have made this statement and I don't know where or when, but that it could also be based upon the amount of money you spend on roads and drainage.

Deputy Town Manager Gucciardo: I think that may have more to do with the formula that comes out of the Florida Statutes then the formula the County is proposing. The County's proposal does not factor in previous spending patterns.

Council member Ryneerson: So this will not help us.

Town Manager Segal-George: You know just so that everyone is clear you always have the right to try to negotiate a settlement, if you cannot negotiate a settlement and if you cannot negotiate a settlement then you have the formulas in the Florida Statutes. The legal dispute between the county and the Town is the interpretation of what the formula is in the Florida Statute and what we would be entitled to under that. We have our opinion of what we think we would be entitled too and the County has their opinion of what the Florida Statutes mean. That is where it would be with regards to expenditures, this is part of that formula in the Florida Statute.

Council member Ryneerson: Let me go back to the question to Mr. Roosa. If we accepted what we have here and then we went to litigation as to the fact that we dispute the Florida Statute as to what the County is saying, will this weaken our case?

Town Manager Segal-George: This would be the same thing.

Council member Ryneerson: Same thing - OK.

Town Manager Segal-George: Just one thing - because I am the one who has been cautioned by the Council to play to nice with the County on more than just one occasion, because I am the hot head that usually wants to fight, I think that you must also take into account the fact that the County cooperation with regard to the kinds of possible fixes you are looking at in the future is very important and then as a funding source for the future with regard to the transportation fixes are very important. If you go to litigation with them on this point, which of course will affect their negotiations with all the other cities,

which means they will not be happy with us and I am sure there will be an impact with regards to how cooperative they can be with regards to transportation fixes. So that is something you must look at too. Not just the money we lose with the gas tax, but also that we would be in a battle mode with the County and this would have an impact on cooperation and how predisposed they would be to want to help us. This is just part of my playing nice with the County.

Council member Rynearson: I would have to agree with that.

Council member Van Duzer: I have been very quiet and not said a word. I had made a note earlier before I got here this evening. The note says "no it is not in our best interest" I felt that we should go to formal litigation in a cooperative manner. Listen to me, because I have listened carefully to what you all have said. I am scared to death of the thing too, because I do not want to lose the million dollars that Bill is talking about and if we accept their proposal and if we can use the \$422,000.00 on an annual basis for drainage problems or for road type problems and not just for transit authority, but for some other issues like this I feel we could easily use up that \$422,000.00 over the next couple of years. Then we get to the end of this and have had the opportunity to realize that we will lose this source of income and try to supplement our income in some other manner, not be raising property taxes, but in some other manner to make up that short fall so at least will not lose it for a couple more years. If this does not work, I feel the only thing we can do is say "gee guys we think we are right and you are wrong the way you are using this formula and lets let a judge decide who is right and who is wrong," whoever makes this decision. It is a no win kind of thing. We either accept the \$422,000.00 plus a couple hundred thousand they give us in gas tax for the next few years and that at that point you know you will go to a couple hundred thousand and will go down every year. Their population is growing and ours will be stable. You must look at it this way. I do not know what is the best way to go about it, if our legal opinion is that we cannot lose this thing then I think we must litigate it. If somebody could give a percentage, if our chances are 75/25 then we litigate it and if they are 50/50 then this is the kind of thing that you must consider and figure out what you are going to do. If we can use that money and I asked that today and it come along at a time when there are a lot problems with drainage, if we can use the \$850,000.00 over two years for additional drainage projects that we do on Fort Myers Beach, then I feel this is probably best thing and just realize that your budget is going down by \$450,000.00 in a couple years and plan accordingly. I don't know what is the answer but this seems to me to be the realistic way to go about it. If Mr. Roosa tells me that we have a 95% chance of winning this thing, let's go for it and do it in a nice manner.

Attorney Dick Roosa: This would definitely be a case of first impression. Alexander Pope once said "be not the first for which the new is tried, nor be the last to cast the old aside." We will be the first. I think there are a lot of merits in our position, but it will have quite an impact. It will not be resolved in a circuit court and will be appealed to the second district courts appeal no matter if we win or the county wins. It might even end up in the Supreme Court. There is no one that can give percentages with so little case law on point and something that has been resolved by negotiation in so many areas throughout the state. It just has not been litigated and so this is an unknown. I think our case has a lot of merit. There is a tremendous inequity in the allocation of gas tax in Lee County. I think we are a good test case because of this inequity. But we are just that and would be a test case.

Council member Thomas: Then there is the question of the cost of the litigation as it goes up to the higher courts systems. What kind of dollars are we talking about to the Town, if it goes to the state Supreme Court?

Mayor Hughes: We spent \$180,000.00 trying to stop the development at Bay Beach. That included the trial level and appeal. This was a complex issue and was a several day trial. Then we settled. We filed the appeal for purposes of trying to get a better deal. We lost in the trial court, filed for appeal and settled. By filing the appeal would have delayed them a couple of years in their development process. We were able to negotiate a little better deal then the trial court, whom I felt was wrong.

Council member Thomas: That could be \$250,000.00.

Mayor Hughes: Yes, it could be that high.

Council member Rynearson: If we did litigate, what would happen with the gas tax? Would it freeze where it is now and we would receive that?

Attorney Dick Roosa: They could do what they wanted. They would probably drop it down.

Town Manager Segal-George: They have already said if we litigate it is \$122,000.00 that we would get.

Mayor Hughes: If we litigate don't we have to go through the procedure where they must receive notice and a joint meeting is held?

Attorney Dick Roosa: Yes, right.

Mayor Hughes: I hate to throw in the towel at this juncture without doing some of that. Also, would mandamus be proper on the basis that they have a mandatory duty to pay us a gas tax under the Florida Statute and they are not doing it and we file a mandamus, which is an expedited type of procedure rather than a trial.

Attorney Dick Roosa: When you go in for a writ of mandamus you better have a paragraph of law that is going to support your case. When you go in with 30 pages of law, you do not have "a clear legal right" and you need a clear legal right to get mandamus. This is an extraordinary writ.

Mayor Hughes: I understand that. It would be a declaratory judgement action.

Attorney Dick Roosa: Yes.

Vice Mayor Cain: I understand the dilemma the County is in. I have empathy for them in as much as when they negotiated with us they did not expect to have a lot of new Towns and cities being developed. We are all pulling at the gas tax, so as far as that I have an understanding of that. I just feel that it is unfair to us, and just like I said before, the fact that we won't meet the criteria that they are creating. We will never be able to meet a criteria enough because of our size and because of our population. Before we get farther into any litigation I would just like to know if there is any other formula. I would like to go back and reach into their minds and say if there is any other way that you could be just a little more just with Fort Myers Beach. It seems like an awful huge cut we are taking here.

Deputy Town Manager Gucciardo: For example, and I do not know if this would make the Council members more comfortable, but the \$420,000.00 (supplemental dollars) being offered for a two-year period, one of the things I considered talking to them about would be extending this beyond the two-year period. Even though the agreement is now proposed as a two-year agreement and intentionally proposed as this because it would then dove tail with Bonita's agreement, if it went beyond that scope and was extended for a ten-year period (for argument sake) if we could get this kind of agreement so that you would have some expectation that the supplemental dollars would still be there beyond two years. The more I thought of it there is still conditional dollars and still puts the Council in a position where we need to go to ask for use of those dollars, unless they are tied directly to initiatives that would come out of the congestion mitigation study. I do not know if this is the best place for the Council to be frankly, to need to go and ask for approval to spend certain dollars from another board. Chris seemed very comfortable that capacity related transportation items are not broad enough so that we may meet all the requirements. I cannot tell you that I know that at this point. A drainage project is a good example. We use a lot of our gas tax dollars for those drainage projects. Without proper drainage, obviously, the road system is not working the way it should. Does this go to maintaining capacity or to increasing capacity? Do we need to try to increase capacity? Will this be the County's criteria as opposed to maintaining capacity? I cannot answer these questions and I do not know that the County staff can either, frankly. In looking for ways to try to massage this agreement, for example extending the term, I kind of ran into the dead end. Even with the extension with the expectation of receiving the supplemental dollars may not get you where you need to be. I am not sure if this is where you want to be. I am not sure if this is something you want me to pursue. We do have another week before we need to make a decision.

Vice Mayor Cain: Can we get any criteria from them at all John? Criteria in regard to what capacity related means?

Deputy Town Manager Gucciardo: Short of giving them a list of the kind of projects we would like to do, I am not sure that we could.

Vice Mayor Cain: They do not have a written criteria for what the capacity dollars could be spent on?

Deputy Town Manager Gucciardo: I could certainly go and see if we could get this more fine tuned between now and next week.

Vice Mayor Cain: OK and possibly ask if it could be extended for ten years?

Attorney Dick Roosa: I think Vice Mayor Cain brought up an issue and it has to do with the criteria they use for allocation of this gas tax. Certainly, the length of roads within a government would be a measure of the amount of tax that would be allocated. There is some logic behind the population. Although, in our case the year round population is one-sixth of what the maximum population is during season. Perhaps, if they were to put in a criteria because it is my understanding eventually this is going to apply countywide to Cape Coral, Sanibel and everybody else in Fort Myers. One of the concerns for the maintenance of roads has to do with the impact of tourists. One of the measures of tourists is our tourist tax. So, perhaps the percentage of the tourist tax could be factored into the allocation of the gas

tax. This would allocate between Sanibel, Fort Myers Beach and Bonita the surer areas where a great deal of the tourists generates those revenues. This percentage could be applied as another factor. When you try to allocate on anyone factor you create gross inequities. Two factors are a little better. The more factors you add into this the more equitable the allocation will be, because you are defining factors which better represent the needs for road maintenance. What you are looking for is an intangible thing, what is a communities need for road maintenance. I do not know whether there is a better estimate for tourist impact, but certainly the roads in Lehigh Acres do not have the impact of the roads of Fort Myers Beach in terms of traffic during the season. There needs to be some factor entered into it and some way of objectively measuring this which could be projected year after year. So, as the year's go by and our percentage of population drops down and the roads stay the same this other percentage, whatever it is that best represents the tourist impact, would be increasing or at least maintaining its own. It may be a meeting with the County Commission would be in order to discuss the criteria. They have limited themselves to two things: population and road. These are nice objective tests, but are cookie cutter and do not fit each situation. That is like saying everybody will be 5 foot 8 inches. That may make a lot of you happy, but a lot of us would be unhappy if they had to cut us down to 5 foot 8 inches. This is actually what they are doing with the gas tax. They are using criteria that is arguably or statistically related to road maintenance, but they are not the exclusive criteria and do not really reflect the changing needs of the various communities and particularly those communities like Sanibel, Captiva, Fort Myers Beach and Bonita Springs that are impacted because of the tourists.

Mayor Hughes: OK, there is another something for you John. There is another aspect and I am unsure if we can work this into it and that is I have always been told that the County spends very little money, what they get in gas tax is like \$140,000.00 for Estero Blvd. and they spend \$15,000.00 or \$20,000.00 per year. We are not getting our share of the gas tax and they are not using their share of the gas tax for the road that is on our island. They are not spending their 51%, which they get of the total dollars and we are not getting a proper share of that back for Estero Island as was pointed out by Council member Van Duzer pointed out. Look at the situation, I do not feel they have done anything since we have been incorporated to help the drainage situation on Estero Blvd.. Would it be appropriate to bring this into the whole discussion?

Deputy Town Manager Gucciardo: You mean to throw in an interlocal agreement, some kind of an obligation on their part to spend the dollars generated by Estero Blvd. on Estero Blvd?

Mayor Hughes: Exactly, because if we could get this trade off it would be a positive thing.

Deputy Town Manager Gucciardo: I could certainly ask and bring that up, although I think that I can't anticipate what their response would be. The purpose of the gas tax dollars is to, at least from their perspective, is to increase capacity to maintain a capacity level which is functional county wide. Therefore, if you used all the gas tax dollars on just the roads which generated those dollars you would never increase capacity. By definition I think their perspective is that those dollars need to be used on other places rather than where they are generated. Does this make sense?

Mayor Hughes: Yes, it does and I understand this. If the road is under water, you do not have any capacity. They want absolute sole discretion on how they spend their gas tax money, but they are trying to pin us down on conditions on how we can spend our gas tax money. This does not seem fair to me.

Deputy Town Manager Gucciardo: We can throw it in the mix.

Mayor Hughes: OK

Council member Ryneanson: Why can't we have a joint meeting with the County Commissioners?

Mayor Hughes: What do you think logistically about a joint meeting and not the pre-litigation meeting, so that it does not have the aura of being antagonistic towards each other. A meeting with the Council.

Deputy Town Manager Gucciardo: There is a timing problem in that all the entities need to let the Department of Revenue know what the allocation percentages are going to be by a certain date. Typically, this is by July 1st but as a practical matter you can stretch this out for a little while. I believe one of the county staff members already has a letter drafted to go to DOR indicating that we are in the process of negotiations and we will let them know as soon as possible. I think there is a fairly short window that we may have to work with. What the procedure will be, for example, if we indicated what the allocation would be and then changed it at some time I do not know if this is possible or not. I could certainly look into this. We need to at least go in with the expectation there would be relatively short

window of time available to get both sides together.

Mayor Hughes: If we took over Estero Blvd. and we got six more miles of roadway how would this affect the dollars under this formula?

Deputy Town Manager Gucciardo: I think that it would add something to it but not significantly. Again, it is the center lane miles would go proportionately but then we would have the financial obligations that go with Estero Blvd. recognizing that there is a lot that needs to be done to Estero Blvd.

Mayor Hughes: OK.

Council member Ryneanson: You said that we could extend it John. What do you think that window could be extended too as far as negotiations before it definitely had to go to the state?

Deputy Town Manager Gucciardo: My understanding is that you may be able to get a month or two from the Department of Revenue, but this is just based on informal conversations with the county finance staff.

Mayor Hughes: More importantly is that state deadline we ran into last year. Our budget is just a draft budget, but you have to certify to the state department of revenue.

Deputy Town Manager Gucciardo: Again, formally that is normally July 1st, although in conversation with county finance staff I have been lead to believe this could be extended. Now whether this could be extended beyond a month or two.....

Council member Ryneanson: Maybe we could set up for a meeting the end of July or the first of August. I know that we are on break, but still could have the special workshop meeting. I just think it is important we do something.

Deputy Town Manager Gucciardo: We could ask.

Mayor Hughes: I am going to suggest that John go back and meets with his people, whoever he has been meeting with at the county, and tell them about all of these concerns that we have discussed today. This be put on the agenda again for next week. You inquire as to the feasibility of a meeting between the Council and the County Commissioners.

Deputy Town Manager Gucciardo: We can certainly do that.

Mayor Hughes: I think that we help rather than getting ourselves in a binding position tonight. Does anyone have any objection to this?

Vice Mayor Cain: I agree with that completely. It is good to try and negotiate something.

Mayor Hughes: Is that alright? Now that we have resolved that matter we will move to the next.

Council member Van Duzer: Dan, before we get away from that, we have spent a lot of money on drainage projects over the last year or two. Could we put together those figures that we have spent compared with the amount gas tax money we have received from the county or can we come up with some sort of facts showing how much money since we have incorporated we got in taxes.

Deputy Town Manager Gucciardo: Sure, we can ask Janeen to try and put something together.

Council member Van Duzer: I think if we are going to sit down and try to negotiate something with them or come up with some kind of thing to show that we need the money and that we are spending it properly that this would be very important. If we got \$25 million and we only spent a \$1 million then shame on us. If it is vice versa, I think this would be interesting. I know that we have spent a lot of money on drainage related projects.

Deputy Town Manager Gucciardo: I think that we can ask Janeen to put those figures together, but it is important to put that into context also with the understanding that the first couple of years we really did not do a lot of drainage projects because we were looking to accumulate reserves on the off change that we needed to do something major and unexpectedly. It needs to be put into context.

Council member Van Duzer: My example and this is what I have been sitting here thinking about is that they are collecting gas tax money for Estero Blvd. and how much do they spend? If you made a comparison of those we would be the winner and we could honestly show that were trying to do a good job for the transportation road system and this why we need the money. As I always, always in a broken record say it is not our traffic that is our problem, it is Lee County's traffic that is our problem. Thank you.

Deputy Town Manager Gucciardo: Understood.

F. Discussion of Town Manager performance evaluation/merit bonus

Council member Van Duzer felt it would be appropriate to excuse the Town Manager during this discussion.

Mayor Hughes indicated a memo was prepared by Janeen on this Town Manager evaluation

advising last year's bonus. The issue before the Council is the evaluation and the merit bonus.

Council member Van Duzer did his evaluation of the Town Manager and found her to be very competent in all areas and he feels she does a terrific job for the Town. She brings in outside funds, which keeps the taxpayer contribution to a minimum. Council has also worked very hard on this as well. He recommended they give her the merit bonus as was done last year at 7%.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to approve the merit bonus at 7% for the Town Manager.

Discussion: Council member Thomas indicated he has been discussing the Town Manager's salary for the last couple of years. He feels there must be more criteria than job performance. It is very comforting to hear the nice things said about the Town Manager's job performance and he agrees. Anyone who takes a job with a company expects a yearly raise after doing a good job. He did some further research and after talking to other business leaders found that other criteria should be utilized. He did further research on the computer and found the average increase in salaries this year is 2% to 2.5%. He was also advised to look at the inflationary figures. Without food or gasoline last year it went up 2.4%. Last year a raise of 7% was given when the inflationary figures.....

Mayor Hughes interrupted and added that this is not a raise being discussed. She is not asking for a raise but a merit bonus.

Council member Thomas confirmed a bonus is being discussed. The bonus was 7% and the inflationary rate was 2.4%. The inflationary rate this year is so far at a 1.1% and if you use fuel and food it goes as high as 1.2%. He feels any business would feel it reasonable to give an increase of the inflationary rate plus 2% to get ahead. A 4% bonus under the tough economic conditions would be a better business approach. In the future they should use some further criteria for the evaluation.

Vice Mayor Cain pulled out the forms from last year. Janeen did provide a new form at their request. She was not pleased with it. She pulled out some old forms on file. Ten items were provided on how to evaluate someone on a bonus. She reviewed some of her evaluation with the Council. She further discussed her grant capabilities, ability to maintain an excellent staff and always has at heart what is best for the community as a whole. When you have an employee who fits these criteria she feels it is important to reward someone for a job well done. She added that there is no other way to receive an increase besides this merit bonus. She feels this bonus is justified.

Deputy Town Manager Gucciardo added that a raise is given if an individuals scope of responsibilities has increased. There are no automatic step up, automatic pay raises or automatic cost of living increases at any level.

Mayor Hughes agrees with both Council member Thomas and Vice Mayor Cain. He indicated if this discussion was pertaining to a raise the criteria would better apply. There is no increase being requested, but just a merit bonus to be in the same amount as the previous year. He further added she has received only one raise in seven years and this was several years ago.

VOTE: **Motion passes unanimously.**

VII. COUNCIL MEMBER ITEMS AND REPORTS

Council member Van Duzer - Raised the issue of the discussion brought forward by Mr. Schilling. In the past, Mr. Schilling came before the Town Council and asked for the allowance to partake

in the traffic mitigation study. This was done with the idea he would work with Chris Swenson. He sees nothing wrong to request with John Davis a meeting be setup between Chris Swenson, Frank Schilling and those people in local DOT who are necessary to have the discussion. He volunteered a member of the Council, if a third party is required. Cooperation should be extended by all parties.

Council member Thomas feels the Town Council and Town of Fort Myers Beach is very fortunate to have a citizen step forward and put in his time, work, effort and skills voluntarily to the Town to try and get a better mitigation study. Mr. Schilling deserves a pat on the back.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to address a requesting letter to the County Commissioners to make a Frank Schilling validation meeting happen with County staff.

VOTE: Motion passes unanimously.

Council member Van Duzer provided a letter sent to him by Steve Roberts along with a picture. He feels this may be a fun sort of project. He would like to the Town Council to indicate they would not object to this and could lend support to this project.

Mayor Hughes indicated he has no objections.

Council member Van Duzer would like this Council to offer their moral support, if no objections are expressed. This could be handled by a non-profit organization and some beneficial advertising could be received.

Mayor Hughes would like Mr. Roberts to provide more information on the Town's role and the kind of program.

Council member Van Duzer attended an MPO meeting and commented on the request for the bridge. He received additional information and added they put together a lengthy 30-page report. Other interesting conversation came out of this. They did an information report about the request. He was told there needed to be additional representation for several committees. He would like to see these positions filled and does feel it would be helpful for any of the traffic problems and concerns of the island in the future.

Mayor Hughes suggested an ad be placed in the newspaper. The Town Manager will comply.

Mayor Hughes - Addressed the request from the Fort Myers Beach Fort of July Fire Works Committee. He indicated they were in need of a check and questioned if the Council needed to act on this? The Mayor seemed to be the only person in possession of this letter.

Town Manager Segal-George replied the Town Council has already authorized this matter and no further action is needed by the Town Council.

VIII. TOWN MANAGER'S ITEMS

None.

IX. TOWN ATTORNEY'S ITEMS

Town Attorney Dick Roosa commented on the Beverly Grady's presence back a few weeks ago. She challenged the decision of the staff with regard to the height limitation ordinance. She has now challenged the decision of the Town Council and filed action in the circuit court.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Bill Thomas to authorize the Town Attorney to defend and represent the Town of Fort Myers Beach with regard to the suit brought against the Town in connection to the height requirements.

VOTE: Motion passes unanimously.

X. PUBLIC COMMENT

Jerry Mitchell came forward and thanked Council member Van Duzer for his push on the bridge. Commented on the Newton Property museum. Will any money be made on this property? He feels that money should be made and property should be sold and funneled back into the Town. Who signed the work order for over one million dollars in the Times square area? He never received a response to his

question. How did this pass through without anyone mentioning it?

Attorney Dick Roosa replied the million dollars was not approved and this is the problem.

XI. ADJOURNMENT

The meeting was adjourned at 9:00 p.m..

Respectfully Submitted,

Shannon Miller
Transcribing Secretary

If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such people may need to ensure that verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based.