

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
FEBRUARY 5, 2001  
NationsBank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I. CALL TO ORDER**

The meeting of February 5, 2001, was opened by Mayor Daniel Hughes at 6:44 p.m.

**Council members present at the meeting:** Terry Cain, Daniel Hughes, Ray Murphy, Garr Reynolds and Howard Rynearson.

Members absent from meeting: None.

**Town Staff present:** 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.

**III. INVOCATION by Father Robert Murphy, Church of the Ascension.**

**IV. PUBLIC COMMENT ON AGENDA ITEMS**

**A. AL VAN HORN**

Advised that when he met our new sheriff Rod Shoap, he had the opportunity to ask him about the role of our VOICE personnel manning the light at the entrance to our beach. Mr. Van Horn told the sheriff he'd like for there to be VOICE personnel who were assigned just to the Beach and not elsewhere. Sheriff Shoap agreed and suggested that we pursue this.

**V. CONSENT AGENDA**

**A. Resolution: School nurses in Florida Public Schools**

This came to us out of a communication from the School Nurses Association requesting the support of the Florida State Legislature and Governor Jeb Bush to provide new funding to Florida's 67 public school districts for school nurses.

**B. Approval of interlocal agreement: AED**

This agreement is with Lee County regarding our automatic external defibrillator. They have received a grant for acquiring this equipment. The grant is for 75% of the cost and we pay only 25% with total expenditure \$455.

**MOTION:** Moved by Terry Cain and seconded by Ray Murphy to approve the Consent Agenda. Passed unanimously.

**VI. ADMINISTRATIVE AGENDA**

**A. Introductory meeting with Sheriff Rod Shoap**

Sheriff Shoap attended the meeting with Capt. Ken Erne. Sheriff Shoap thanked us for inviting him. He thinks that having the volunteers here is a good thing. He noted that he grew up in Lee County. Mayor Hughes wished him much success in his tenure as sheriff.

**B. Agreement for law enforcement services.**

Deputy Town Manager Gucciardo said this is essentially the same agreement that we had with the previous sheriff's administration. We have altered the begin date. What it indicates

is that the sheriff's office is operating as our police department here on the Beach. It's been a pleasure working with the west district and Capt. Ken Erne, and Mr. Gucciardo said he looks forward to working with the new sheriff as well.

**MOTION:** Moved by Ray Murphy and seconded by Garr Reynolds to approve the agreement between law enforcement services and the Town of Fort Myers Beach and the Lee County sheriff's office. Passed unanimously.

**B.a. Final Public Hearing: Ordinance 01-01. TECO Franchise agreement**

This is a natural gas franchise agreement with Peoples Gas System, a division of Tampa Electric Company.

Mayor Hughes ascertained with Attorney Roosa that comments had been made on the original draft and amendments made at the first hearing and that there were no changes in this draft from the prior hearing.

A question had come up according to John Gucciardo as to whether a longer agreement could result in lower rates. A representative of TECO said they couldn't say whether this would happen because the rates are set by the public service commission but does help maintain lower rates in two indirect ways: through increased expansion and also through a business risk.

Don Mestas, an employee of TECO, thanked the Council for considering their ordinance this evening. At a previous hearing, Peoples Gas had requested a 20-year term on the agreement, consistent with their expansion into the Southwest Florida area and with their agreement with the City of Fort Myers from which they will be expanding into Fort Myers Beach. Asked for their timetable for bringing the service in, Mr. Mestas said their hope is to expand their system into the community of Fort Myers Beach by the end of the third quarter of this year.

Mayor Hughes said he had no problem with changing 15 years to 20 years. Vice Mayor Murphy said he also felt that the difference of five years wasn't really that significant. By saying 20 years we're showing our good faith in TECO.

**Public Input:**

**A. Al Van Horn**

Felt that the discussion leading up to this agenda item has been that there is a prospect of accommodating our utility line underground at the same time that this process is in effect. Mayor Hughes said that John Gucciardo has been working with TECO on this.

Mr. Gucciardo said he has scheduled a meeting with TECO engineers on Thursday and coordination is one of the items they'll be discussing, not only with FP&L but also with Lee County Utilities.

**MOTION:** Moved by Howard Rynearson and seconded by Garr Reynolds to approve the authorization of the execution of the franchise agreement with the one modification that it will be a 20-year agreement. Passed unanimously.

**C. Discussion of Town Park**

Vice Mayor Murphy stated that there has been a big demand for counties, municipalities and the state to acquire public lands to put in trust for the future. The competition is becoming fierce for these properties, particularly on the beach fronts. In Lee County there is very little beach front to be had anymore as it has been bought up by developers. In 1998 the citizens of Lee County voted by referendum to tax themselves to buy open green space to put in the public domain for perpetuity. Thousands of acres have been acquired this way and there are

thousands more under contract right now and they predict acquiring even more. This program will end in 2004 and Vice Mayor Murphy said he predicts that the residents of Lee County will probably vote again to extend that program because it has been so successful.

Vice Mayor Murphy stated that he had learned that Jim and Ellie Newton wished to sell their beachfront property to the Town of Fort Myers Beach. Mr. Newton was an environmentalist with an affection for nature. The Town felt that this was in their best interest to preserve this property and also to expedite the Newton's interest with their trusts.

**MOTION:** Moved by Ray Murphy and seconded by Terry Cain to instruct the Town Manager and Town Attorney to move forward with negotiations with the representatives of the Newton Trust to bring back to the Council a contract for purchase and sale for the Newton property and also simultaneously instructing the Town Manager to begin working immediately on procuring or investigating the possibility of grant money with the Florida Communities Trust, or whatever available grant money is out there.

**Discussion:**

Town Manager Segal-George was asked to comment on her memo briefly. She said that in the memo what she tried to do was to give us an understanding of the parcel, the amount of gulf frontage, the size of the six lots involved and the fact that we have beach accesses on both sides. One is a developed beach access. The other one has never been developed. There are some funding possibilities out there and we have a very good relationship with the Trust for Public Lands and also Florida Communities Trust. There is the possibility also of pursuing 20-20.

Also mentioned in the memo is that there is quite a bit of opportunity for parking on that parcel. We could have metered parking and sticker parking for residents.

There are other buildings, one of which could be converted to a bathhouse and rest rooms.

We can get a park planner in and do workshops with the public involved.

Where will the money come from for maintenance? Town Manager Segal-George said that those kinds of questions would have to be answered as we pursue planning, remodeling and maintenance.

Attorney Roosa advised that this property would be sold subject to a life estate on the part of Mrs. Newton, which would mean we would not get possession until after she passed away. So initially we would have no expenses as far the maintenance aspect of it. Then cost of the maintenance depends on the facilities provided. This is a unique type of purchase. The sale price will be something less than the fair market value.

Mayor Hughes ascertained that the life estate would apply to the entire parcel and not just to Mrs. Newton's residence.

Councilman Reynolds said he couldn't imagine continuing as a Town without a gulf front park. He is absolutely thrilled about this.

Councilwoman Cain felt that this is a fabulous opportunity.

Vice Mayor Murphy said he wanted to make sure we were going to move forward immediately in the contract negotiations. He also thinks that the requirement that the park be named Newton Park or something to that effect honoring Mr. and Mrs. Newton would be very appropriate.

**MOTION:** Moved by Ray Murphy and seconded by Terry Cain to instruct the Town Manager and Town Attorney to immediately begin negotiations with the representatives of the Trust of James and Eleanor Ford Newton Trust to enter into negotiations to move forward to acquiring the Newton property and also simultaneously to instruct the Town Manager to pursue the grant applications that will be required to fund this purchase. Passed unanimously.

The trustee for Newtons said the ongoing discussions are what they look forward to now.

**D. Discussion of Estero Boulevard report**

Town Manager Segal-George said that this report was submitted to the Council a couple of months ago but always got bumped from the agenda. Bill Morris from Morris & DePew was in the audience to answer any of our questions. This gives us a look at the Estero Boulevard right-of-way.

Town Manager Segal-George said that in March she would talk about a date for doing a retreat again this year and the major topic for the retreat will be the Streetscape and Estero Boulevard.

Bill Morris introduced himself. Mayor Hughes told him that on his maps are segments 1, 2 and 3 have part of 4. The segments don't jibe with the references on the bottom of the page and we should have this corrected. Bill Morris said he would be happy to submit new exhibits.

When putting the report together, Mr. Morris said they were looking at a general evaluation of Estero Boulevard that was broken down into three main factors: the physical condition of the runway, safety factors and drainage issues. The sections of the runway south of the San Carlos bridge are in pretty good shape from a structural standpoint as well as the pavement and the areas extending away from the pavement. The drainage in some areas can be improved upon although it has inherent problems. The safety elements reviewed south of the bridge involve the sidewalks and how they're located with respect to the travel lanes; what sort of lighting is provided for the crosswalks. The pavement north of the bridge is in various states of failure due to what appears to be the excavation for the sanitary sewer that was installed some time ago.

Town Manager Segal-George advised that we should let her know of any further questions we may have so that they can have answers for us before we go on the retreat.

Bill Morris assured Vice Mayor Murphy that there was no immediate danger from the roads.

**E. Discussion of Council Policy and Procedures Manual**

There have been some revisions made by Town Attorney Roosa that the Council has recommended pursuant to an earlier workshop on this matter. There were changes with regards to individuals wishing to speak during public comment; on page 6, #4, there was a change with regards to residency. Attorney Roosa said he would recommend that the Council adopt these policies, which can be amended at any meeting.

**MOTION:** Moved by Ray Murphy and seconded by Howard Rynearson that the Council adopt these policies, which can be amended at any meeting.

**Discussion:**

Councilman Reynolds referred to page 3 where it says that "all participants and audiences at Town Council meetings are expected to exhibit common courtesy and proper decorum" and said he was glad that it was there. He also mentioned his pleasure at seeing other items that are already in the policies but which he feels haven't been given particular notice. He would like to see deleted the policy of staff opening mail addressed to individual council members and answering it.

**MOTION:** Moved by Ray Murphy and seconded by Howard Rynearson to approve the Council Policies and Procedures Manual pages presented to us this evening. Passed 4-1 with Councilman Reynolds dissenting on

the mailing issue.

**F. Committee reappointments:**

**1. Community Resource Advisory Board -- Don Muringello**

Town Manager Segal-George advised that Don Muringello is being reappointed. We now have two more applicants for C.R.A.B. and their names will come in front of us at our next meeting.

**MOTION:** Moved by Terry Cain and seconded by Garr Reynolds to appoint Don Muringello to the Community Resource Advisory Board. Passed unanimously.

**2. Public Safety Task Force**

- a. Peter Pholik**
- b. Richard Barba**
- c. Joellyn Reckwerdt**

There was only one vacancy. Each council member was told to vote for only one applicant.

Town Manager Segal-George announced that the newest member of the Public Safety Task Force was Joellyn Reckwerdt.

**II. COUNCIL MEMBER ITEMS AND REPORTS**

Vice Mayor Murphy advised that in a month and 12 days will be St. Patrick's Day on March 17. There will be a parade again this year on a Saturday.

Mr. Murphy referred to a letter in the News-Press regarding the tax appraiser Ken Wilkinson by someone on Fort Myers Beach. The gentleman was one of the residents who got vocal about the possible annexation of Black Island into Lover's Key and he actually lives in Bonita Springs.

Howard Rynearson referred to a deviation in density for Rusty's that he would like to bring back. Mayor Hughes said Mr. Rynearson would like to reconsider Deviation 5 that was approved. If Rusty really doesn't need the number of parking spots that he's planning on right now, he'd like to make the parking spots at 9 ft. instead of taking them back down to 8 ft. because that's just too small in his opinion.

Town Manager Segal-George said she guesses there are a couple of thresholds here as where this can be revisited. The first would be to ask their lawyer to see if we can get an idea of the impact on the development to go to Regulation 5. When the Council was approving the CPD, their attorney made it real clear that the real go-ahead on that is dependent on that Comp Plan Amendment. So until that Comp Plan amendment goes through that process, they really don't have any units. Mayor Hughes noted that we will have Mr. Roosa rearticulate all the conditions and everything that we imposed at the public hearing on this matter and that's coming back at our meeting next Monday. Councilman Rynearson would, of course, have the right at that point having voted in favor of Rusty's to move for reconsideration at that time at which time we have to decide whether we want to rescind this deviation or modify it. Another alternative would be to defer this until we know what the number of units are going to be and just take it into consideration at that later date. Another possibility according to Attorney Roosa is that when we make the amendment and determine the multiplier that we put as a provision to exercise that multiplier to provide a minimum of 9 ft. parking spaces. Town Manager Segal-George said she would try to have an answer for us by next Monday.

Councilman Rynearson said he attended his first TDC meeting the other day with John and it was very interesting. They have a meeting with BT tomorrow morning for breakfast. John has

promised that we'll have an open checkbook.

Mayor Hughes said he had been contacted by the League of Women Voters on school impact fees and there was a consensus of our Council that we wait to see if they commence with the study. He called Ms. Laura Miller from the League and told her that the Town would take another look at that when they had concluded their study. It was his understanding that we could utilize their study and save ourselves the cost of hiring our own consultant to do that. Then if the Council so chooses we could levy an impact fee within the corporate limits of the Town.

#### **VIII. TOWN MANAGER'S ITEMS**

Town Manager Segal-George said they had tentatively picked the date of March 14 for the retreat. It would be at the Holiday Inn Bell Tower again and she wanted to make sure that the date is acceptable to everyone. On the 12th we'll have our land use cases and on Wednesday, the 14th, we'd probably start out around 9:00 a.m. and finish about 2:00 p.m. No one expressed a problem with the date.

#### **IX. TOWN ATTORNEY'S ITEMS**

Attorney Roosa advised that the golf-type vehicle we had purchased from Bombardier has never functioned properly. We tried to negotiate some sort of settlement but have been unable to. He would like authority to file a lawsuit for breach of warranty. Town Manager Segal-George noted we had gotten the vehicle with grant money and wondered if it would be a expensive proposition. Attorney Roosa said there was a problem with the generator and the local representative said that what we need is a charger that costs about \$800.

**MOTION:** Moved by Dan Hughes and seconded by Howard Rynearson to authorize our attorney to bring an action against Bombardier for failure of equipment that we purchased from them. Passed unanimously.

Attorney Roosa said that the second thing he had was a need to file suit against Florida Industrial Equipment for a breach of warranty regarding two trash compactors. Town Manager Segal-George noted that the compactors have never done what they were supposed to do. We went back to having Ed pick up all the trash in the Square and then taking it to a remote dumpster. These compactors never compacted the garbage in the amount that the company represented and it was continually brought to the company's attention. They were asked to fix it but we have gotten nowhere with them and we continue to pay on the installment contract every month.

**MOTION:** Moved by Howard Rynearson and seconded by Ray Murphy to authorize Council to bring an action with regard to the compactor equipment. Passed unanimously.

Attorney Roosa said we had been provided with copies of legal statements from Robert Sherman of Henderson Franklin. These services were provided on behalf of Garr Reynolds and he submitted those to the Town for payment. Attorney Roosa described the two methods of payment. In this instance there was not a civil lawsuit filed. It just involved an EEOC claim and didn't come under the cloak of the Florida statute. However, the courts have carved out a method to determine the eligibility for attorney fees on behalf of a public official. Councilman Reynolds said that the lawsuit did arise from the performance of his duties as an official of this town. Mayor Hughes noted that the bill did not relate to any lawsuit. Vice Mayor Murphy said he would like to think that if any member of Council had to defend themselves in the capacity of this job that the other council members would approve the payment of legal fees. But given the law that's been quoted here, he doesn't know how legally we can do that. Councilman Rynearson said

he would pretty much agree with Ray Murphy and he feels that we have some responsibility there. Councilwoman Cain said this was a request for services rendered and that it did not go to a lawsuit and the findings would have to be in regard to a lawsuit. Attorney Roosa advised that the Council had the broad discretion in making these findings. All he can do is establish the guidelines. Mayor Hughes said that a defendant must be able to tell the Council that he was sued out of something that arose from the performance of his official duties and in performing those official duties, he was serving a public purpose. This isn't the case here.

**MOTION:** Moved by Howard Rynearson and seconded by Terry Cain to table the Reynolds matter. Passed 3-1 with Councilman Reynolds abstaining and Vice Mayor Murphy voting no.

**X. APPROVAL OF MINUTES: NOVEMBER 13, 2000, DECEMBER 4, 2000, DECEMBER 11, 2000 AND DECEMBER 29, 2000**

**Corrections and changes to minutes of November 13, 2000:**

1. On page 1 indicate under ex parte communications that Councilman Reynolds met with the present developer.
2. On page 10 the motion on the Times Square clock was shown as passing 4-1 when it should have been shown as passing 4-0. Councilman Reynolds had to leave before the motion was made.

**Corrections and changes to minutes of December 4, 2000:**

1. Mayor Hughes felt that on page 6 the motion was not completely worded.

**Corrections and changes to minutes of December 29, 2000:**

1. The motion showing that Howard Rynearson filled the vacancy doesn't show the vote, which was 3-1 with Councilwoman Cain dissenting.

Motions are unanimously approved.

**XI. PUBLIC COMMENT**

**A. BILL THOMAS**

Mr. Thomas thanked everyone for the beautiful flag pole and flag outside and said it was a very proud day for him. He also feels it would be appropriate if an MIA flag flew with the American flag.

Mr. Thomas thinks the people of the Town support Garr Reynolds and he doesn't think he has any choice but to get an attorney when an accusation is made against him. Council members should not be taking money out of their own pockets to defend themselves against something like this.

**B. JERRY SAWYER**

Mr. Sawyer expressed his appreciation for seeing the flag flying outdoors. He also feels that we have the responsibility to stand behind Mr. Reynolds. The Town needs to find a way to support this man who incurred this expense in going about his duties.

**C. GEORGE BARBER**

Would like the Town to find a way to support Mr. Reynold's action. There are executive powers that can be used for this.

**D. DON MISCUCCO**

Also feels that Mr. Reynolds should be supported.

**E. JOELLYN RECKWERDT**

Thanked the Council for her appointment to the Public Safety Task Force and she will

do her best to serve on that committee to the best of her ability.

**F. JAMES DEFOE**

Also feels that Mr. Reynolds should be supported.

**G. MORRIS GIBERLEY**

Stated that Councilman Reynolds is his favorite council member as he has been looking out for the best interest of the Town and he would like to see him supported in this matter.

**XI. ADJOURNMENT**

The meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Lorraine Calhoun  
Transcribing Secretary