

**FORT MYERS BEACH
TOWN COUNCIL MEETING
NOVEMBER 5, 2001
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The regular meeting of November 5, 2001 was opened by Mayor Daniel Hughes on Monday, November 5, 2001, at 6:33 p.m.

Council members present at the meeting: Mayor Daniel Hughes, Vice Mayor Ray Murphy, Howard Rynearson - Council, Garr Reynolds - Council, Terry Cain - Councilwoman

Excused absence from meeting: None

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Janeen Paulauskis, Damon Grant, Dick Roosa (Town Attorney), 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 SW FL

Reverend Dick Tafel gave the invocation.

** Mayor Hughes announced that a unique situation exists this evening. After six long years on the Town Council two of their esteemed fellow Council Members will no longer be able to serve, because of the term limitations in the charter. With great pleasure and an honor they have a plaque for each of the two retiring Council Members and a picture. Mayor Hughes presented the first plaque to Councilman Garr Reynolds (Applause was given).

Councilman Garr Reynolds expressed that he is proud he was able to serve the people of the community. He feels that each and every person did work with him and if they did not this was OK. They would have had their own reasons. He is always pleased to hear a different voice. He plans to be here for many more years.

Mayor Hughes presented the plaque to Vice Mayor Ray Murphy (Applause was given).

Vice Mayor Murphy thanked all his fellow Council Members and staff, and indicated that it would not have been as fun without everyone. He appreciates all that they have done. He thanked his family who shared him with the Town for six years. He also thanked his Mom & Dad, who were present, for their encouragement and his immediate family. He expressed thanks to all the Committee Members. Without the help of all these people their jobs would be more difficult. He especially thanked all the people of the Town. There is no higher calling than public service and it has been an honor and privilege to serve his fellow friends and neighbors of the Town. He has truly enjoyed it and will always cherish it. Thank you very much.

IV. PUBLIC COMMENT ON AGENDA ITEMS

Anita Cereceda came forward and expressed congratulations to Vice Mayor Murphy and Councilman Reynolds. She indicated that it was wonderful being up there with them.

She is speaking this evening on the John Mulholland Stewardship Award. When she first heard of it she thought it was a great idea. She would much rather have John Mulholland

sitting here than having something named after him. She feels that it was wise for the Council to pick someone such as John Mulholland to honor and set up as an image and role model for children of the community. He is truly an example of someone who brought himself up and made himself proud. She expressed that his finest moment was sitting on this Town Council and being the Mayor of the Town. She will always be grateful for the friendship and grateful that someone such as this existed in the Town for others to follow in his path. She applauds their efforts to continue the spirit of John Mulholland in this Town, and on this Council by setting up the Stewardship Program and Scholarship.

Reverend Dick Tafel came forward and congratulated Vice Mayor Murphy and Councilman Reynolds for their years of service to this city. He also congratulated the Council for facilitating the citizens speaking and bringing their concerns before them.

He addressed Agenda Item XI - Public Comment. He feels that it should be moved closer to the top of each agenda. If a citizen has a concern that is not on the agenda they must wait the whole evening to share their thoughts. It will only add a couple minutes on to the beginning of each meeting.

Mayor Hughes addressed the concern of Reverend Tafel regarding Public Comment. He indicated that this is a provision in their Policy and Procedure Manual that was established by the Incorporation Committee and adopted by the original Town Council. If this would be changed the format would be for someone to move to modify the Policy and Procedure. Any Council Member may wish to do this.

Councilman Reynolds expressed that they should leave the Public Comment at the end for those who wish to address items at that time. He indicated that they could allow others to speak on items other than agenda items in the beginning and it would not require a change to do so.

V. CONSENT AGENDA

- A.** Proclamation: National Epilepsy Awareness Month
- B.** Resolution: Amending Resolution 01-23, Water Utility Rates
- C.** Estero Island Beach Restoration Project Update
- D.** Schultz Chaipel & Co. Retention Agreement

Mayor Hughes withdrew Item C - Estero Island Beach Restoration Project Update from the Consent Agenda. He commented that over the weekend there was a lot of publicity in the television media indicating that they have lost their Federal funding on the Estero Island Beach Restoration Project. The County Commissioners were going to consider the matter at their Management and Planning Committee meeting set for today. Deputy Town Manager Gucciardo has clarified this for Mayor Hughes. Mayor Hughes feels that they have some very important issues to discuss. There is no pressure for time. The project will not proceed until next summer. He feels that they should have a meeting with the County personnel involved in this.

MOTION: Made by Councilman Howard Rynearson and seconded by Vice Mayor Ray Murphy to approve Consent Agenda Items A, B and D. **Motion passes unanimously.**

Deputy Town Manager John Gucciardo expressed that he was not aware of the media broadcast this past weekend. He feels that the media was reacting to some information that became available to them on Friday regarding the Federal Budget. He has been reporting to the Council that there were two pieces to the puzzle that they needed to see in place before they knew the project could go forward. The two pieces are that either the appropriation for the funding show up in this years Federal Budget or the PCA be signed. Either one of these would allow for a higher degree of confidence in the ability to receive reimbursement. On Friday, they

became aware that their project was not in the appropriated funding. He has this report available for Council. This lets them fall back into looking for the Project Cooperation Agreement. Steve Boutelle advised him that this is still a few months off and would probably take place in the spring or April. The Commissioners indicated that they were uncomfortable going ahead and having this project sent out for a contract and construction, unless they knew that the Federal money was going to be there. They indicated a strong desire to see the project go forward. They were not willing to indicate to staff that they should look toward moving dollars to supplement the missing Federal dollars. He indicated that they would be looking for a workshop between the Town Council, Board of County Commissioners, representatives from the Gasparilla Project and the Captiva Erosion Prevention District.

He went on to discuss the easements and held up a drawing showing the easements that they do have in place and the ones that they are still missing. They are still having difficulty reaching the single-family owners who are not local residents. The idea of looking at the language for the easements may not be the closed door they originally thought it might be due to the setbacks they have now encountered. He expressed that in dealing with most of the residents the difference between 50 years or perpetual will not make much of a difference to their objections to the language.

Mayor Hughes directed staff to set up a workshop with all the appropriate entities at a mutually convenient time.

VI. ADMINISTRATIVE AGENDA

A. Public Hearing: Ordinance 01-08 - Council Compensation

Mayor Hughes indicated that this would be a Final Hearing. He read the ordinance and expressed that this is pursuant to a motion made by Councilman Ryneerson. This is the ordinance in final form and would become effective in December.

Mayor Hughes asked if anyone would like to address the Council. Attorney Dick Roosa explained that the changes in the compensation would be from \$600.00 to \$1200.00 for Council Members and from \$700.00 to \$1400.00 for the Mayor per month, if the ordinance is adopted. Public hearing was closed.

MOTION: Made by Vice Mayor Ray Murphy and seconded by Councilwoman Terry Cain to approve Ordinance 01-08 - Council Compensation. **Role Call Vote. Vice Mayor Ray Murphy, I - Councilwoman Terry Cain, I - Councilman Howard Ryneerson, I - Councilman Garr Reynolds, no - Mayor Daniel Hughes, I. Motion passes 4 to 1. Councilman Garr Reynolds dissenting.**

Discussion: Councilman Reynolds would like to have a clause stating that this would be retroactive to December 31, 1995. Mayor Hughes indicated that the Florida Law states that you cannot change the compensation during the term and must wait until the next election.

B. Public Hearing: Ordinance 01-09 - Cable Franchise Ordinance

Mayor Hughes expressed that this is the First Public Hearing. Vice Mayor Murphy read the Ordinance. Mayor Hughes asked if anyone would like address the Council. Public hearing closed.

Deputy Town Manager Gucciardo expressed that he had indicated in the memo they had been in negotiations with Comcast regarding the two documents they have for consideration. One would be the Ordinance and the other is the Franchise Agreement. He explained that Maureen Cesastari is present from Comcast and has delivered a marked up version of the Ordinance with some of the suggestions, and possible changes from Comcast's

point of view. The County format is the basis for the Ordinance and Comcast has also used this Ordinance as a base. He suggested at the meeting of November 19th he will have a memo prepared for the Council attempting to summarize the changes and the suggestions from Comcast. They will look for final adoption at the next meeting, which would be the first meeting in December. He is aware that the Condominium Associations are having a meeting with Comcast on November 14th. They have been copied with the Franchise Agreement and Ordinance and will be discussing at their meeting. They may also have some suggestions or requirements. They would then have the opportunity to come before Council on the 19th of November. He does not see a reason that they cannot get the Ordinance and Franchise Agreement resolved by the end of this calendar year.

C. Review of Cable Franchise Agreement

Maureen Cesastari came forward and indicated that she is Director of Government Affairs for Comcast. She transferred recently from their Sarasota area to this area. Her responsibility is working with them on the Franchise negotiations. Comcast recently came into this area and assumed the cable systems from Media One and Adelphia. She is looking forward to working with the Town of Fort Myers Beach and coming up with an agreement that will be beneficial to the citizens of the Town of Fort Myers Beach. She will be happy to answer any questions they may have. Mayor Hughes has some comments on the Franchise Agreement that he would like to see in the next draft. He discussed the possible Franchise office on the island. He feels that this would be a good thing to have. Item 2 regarding access channels - he believes that they all are wanting this.

Deputy Town Manager Gucciardo thought the idea of the access channel would be kept in their back pocket as a potential item, but not necessarily have it immediately. Janeen has been working with Comcast and the County to see that their Council meetings can be broadcast live and be repeated. This would be on the County's channel 53. He asked for confirmation that this is the direction the Council is going.

Mayor Hughes commented that he felt the Franchise Agreement is a little vague when referring to sufficient liability. He would like to see in the Franchise Agreement "shall comply with the Insurance requirements set forth in Ordinance #..." Deputy Town Manager Gucciardo replied that since there is other language in the Franchise Agreement which talks about compliance with the Ordinance what he is looking for is already there. They were specific in the Ordinance and tried to be more general in the Franchise Agreement. He can add the language specifically.

Mayor Hughes announced that there will be a further hearing on the Franchise Ordinance on November 19th.

D. Motion to reconsider the vote of approval on the John Mulholland Stewardship Award by Councilman Reynolds

MOTION: Made by Councilman Garr Reynolds and seconded by Councilwoman Terry Cain to move that the approved motion from the last Council meeting regarding this issue be rejected. **Motion fails 4 to 1. Councilman Garr Reynolds voting in favor.**

Discussion: Councilman Reynolds expressed that after research he has done and the information that he has gathered from residents, no one that he has talked to wants such an award in Town Hall. Further, no person outside of Town Hall spoke in favor of another award being named on behalf of Mr. John Mulholland at this time. He noted to John's wife Nancy and

family that this is no way reflecting on the honor that all on Council feels for her husband.

Councilman Reynolds read his memo that was given to all Council Members via e-mail.

Councilwoman Terry Cain commented on this e-mail from Councilman Reynolds. She indicated that she was very surprised by this e-mail and expressed that she had made a packet up prior to the October 22 Town Council Meeting. This was part of the information she gave. She stated that she is not the sponsor of the John Mulholland Stewardship Award. This is an environmental recognition for the community and was developed by the Marine Resources Task Force. It was named in honor of John Mulholland because he was the Chair for the MRTF, Town Mayor and because of his environmental concerns. She indicated that Vice Mayor Murphy had obviously read his packet and this was why he was so quick with his vote. She expressed that the naming of Mulholland Point is a long process and may take 20 years to happen. MRTF thought that it would be nice to have something named after John now, and specifically an environmental recognition award for the community. She does not feel that they need to wait 20 years to name something after someone. The tree symbol was seen by her in the library. It is used in hospitals and is usually used for donations. They reversed the idea of giving by giving back to the community. She believes that there is a need to reward people in this community for what they do to go the extra mile. They not only should be recognized, but set a good example for others. She feels strongly about this and she feels that this is a project they need. It is very advantageous to recognize people in the community.

Councilman Reynolds read the program. He questioned the leaves and received clarification from Councilwoman Cain. He is very environmentally minded. He appreciated what she is doing. His only objection is that it should not be named after an individual.

E. Quarterly Update on Water Utility

Deputy Town Manager Gucciardo indicated that he had tried to summarize some of the issues they have been dealing with since the purchase of the water utility by the agency back in the beginning of August. He is looking for feedback from the Council as to whether or not this type of a summary is valuable, and if it makes sense to have it on a quarterly basis. He wanted to keep them up to date, but it is different than some of the projects they have to presently deal with. By the next meeting on the 19th they should be able to report back to Council regarding the status of the flow of revenue into the utility and expenses that the utility is responsible for. At this point, the utility owes the Town Council only the funds that were fronted by the Town Council up until the point of purchase. This is the approximate \$104,000.00 indicated in the memo. Both the capital and operating expenses have been handled by the utility. He expressed that they may be in arrears about \$14,000 or \$15,000. It is not an issue at this point. Hopefully, by the next meeting they will be able to indicate to the Town Council that the revenues have caught up to the initial expenses, and that the utility is operating as a stand alone entity. They may need to borrow from the general fund, if the revenue does not pick up in the next week or two.

Mayor Hughes feels that this is an excellent report. He asked if borrowing from the general fund requires a specific resolution by the Town Council? Attorney Dick Roosa replied that the Council should vote on it for authorization.

MOTION: Made by Mayor Daniel Hughes and seconded by Councilman Howard Rynearson that staff is authorized and directed to continue to borrow from the Town general fund in the amount of approximately \$18,800.00, which represents O & M cost to date plus bills less revenue, as necessary. **Motion passes unanimously.**

Discussion: Vice Mayor Murphy commented that he appreciated the update memo. He asked if they know longer meet as the Utility Board to discuss these items? Mayor Hughes replied that this is authorizing monies from the Town General Fund. This is the reason for it being held in this manner.

Councilwoman Cain commented that she appreciates the memo as well. Mayor Hughes expressed that he also liked the report. It is just about right in terms of detail. He would like to see this continued. He would also like to receive a quarterly financial report from Janeen on operations of the beach water.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Councilwoman Terry Cain - On October 27th they had fun at Bay Oaks with the Haunted House. October 28th was Monofilament Madness with an estimated 120 people from both sides of the Bay to show up. They cleared out over 3,000 pounds of trash.

Some went to a dedication at St. Raphael's.

There are quite a few local residents and DEP up in Tampa requesting to get the Estero Bay Project put back on the "A" list. It is presently on the "B" list and it would make it very difficult to obtain funding.

Vice Mayor Ray Murphy - He will need to be replaced on several committees outside of the Town. There will be a position on the Southwest Florida Regional Planning Council, Metropolitan Planning Organization and Horizon Council. He is hoping to stay on the Regional Planning Council, but this is to be determined.

He commented on the dedication at St. Raphael's. It was a nice affair and ceremony. Councilman Rynearson was also present.

Councilman Howard Rynearson - Wanted to commend Councilwoman Cain for the great job she did. There was a lot of trash picked up.

He expressed that Vice Mayor Murphy and Councilman Reynolds will be missed. He has appreciated the time spent with both and it has been his pleasure.

Councilman Garr Reynolds - Wanted the people in the audience to know while discussing the retroactive salary he was kidding. He voted against the salary increase. He is still against it and feels that Town's such as Sanibel who work with all volunteer Council Members work pretty well.

He thanked all the Council Members for reviewing the Stewardship Award.

He has enjoyed being on Council. He has not enjoyed all the ups and downs. He was here for a reason and he truly has enjoyed it. He feels that they worked real hard. He thanked all the Council Members and members of the community.

Mayor Daniel Hughes - On October 23rd he presented the Proclamation for Red Ribbon Week on Drug Awareness.

On the 25th he and Vice Mayor Murphy attended a reception, Uncommon Friends, which was in honor of Former Senator Connie Mack. Vice Mayor Murphy talked with him about possibly helping the Town in going to Tallahassee for the acquisition of Newton Property. This was a very nice reception and Mr. Mack was given a lifetime award for the Uncommon Friends.

The Bay Oaks festivities were fun. The Monofilament Madness was a great event. A lot of things were retrieved from the Bay. He expressed with the other Council Members that they appreciate the enthusiasm and willingness of Councilwoman Cain to do this project.

The Barrier Island Conference may turn into a permanent organization. The Barrier Islands have unique problems and conditions that they do not necessarily share with the Towns on land.

He expressed that they received a very nice letter from Judy Michelski the Beach School principal. She thanked them for rewarding and honoring the students for their efforts in the "My Town Poster Contest".

He and Councilwoman Cain wrote letters to the Acquisition and Restoration Council, which will make a recommendation to the Governor in the cabinet for approval on December 6 on the Florida Forever Projects. It is extremely critical to them. He knows that they all feel strongly about preserving the Estero Bay Aquatic Preserve. They still have until December 6th to reply.

Veteran's Day is November 11. He received an invitation from the Veteran's of Foreign Wars to their 50th Anniversary of the Korean War Commemoration Program at the VFW. He will try to attend and hopes that others will also.

November 10 is the Lover's Key State Park - Great Outdoor Adventure Day from 9:00 a.m. to 3:00 p.m.. They are all invited.

VIII. TOWN MANAGER ITEMS

None.

IX. TOWN ATTORNEY'S ITEMS

Attorney Dick Roosa expressed that Council has been provided with a copy of a Warranty Deed. This will resolve the Primo property dispute. In order for a deed to be recorded from a public body the public must accept this. He asked that they vote to accept this Warranty Deed.

MOTION: Made by Councilman Howard Rynearson and seconded by Councilwoman Terry Cain to accept the Warranty Deed. **Motion passes unanimously.**

Discussion: Mayor Hughes pointed out that a correction needs to be made in the legal description. The Lot number is missing and should read Lot 7, Block 8. He also asked if the taxes will be paid? Attorney Dick Roosa replied that they will pay the taxes because it is under the old strap number.

X. APPROVAL OF MINUTES: OCTOBER 8, 2001

Corrections and changes to minutes:

1. Mayor Hughes - Page 5 - 3rd paragraph, second sentence - Strike the word "state" and replace with Town.
2. Mayor Hughes - Page 5 - 3rd paragraph, last sentence - Strike the word "no" and replace with any.

MOTION: Made by Vice Mayor Ray Murphy and seconded by Councilman

Howard Rynearson to approve the minutes of October 8, 2001 with corrections.

Motion passes unanimously.

XI. PUBLIC COMMENT

Al Van Horn came forward and reaffirmed what was said by Vice Mayor Murphy. He does wear several hats and he feels that it is vitally important that they have a continuation of representation from the Council. He feels that it is very important for the MPO to be represented. He encouraged the Council to fill the appointment that will be vacated. He also mentioned the Traffic Committee that Councilman Garr Reynolds sits on.

Harold Douglas thanked both Vice Mayor Murphy and Councilman Garr Reynolds. He asked if they were following Lee County unincorporated in regards to the Comcast? He indicated that it was published this way in the newspaper with the higher rate. Deputy Town Manager Gucciardo replied that the attempt was to be revenue neutral, which means to collect from the residents the same amount that they collected before.

Don Musuco expressed that he has supported Councilman Garr Reynolds over the years. He is sad to see him leave the Council. He is happy that this will allow him time to pursue endeavors that may be more enjoyable than visits to Town Hall. He also included Vice Mayor Murphy and thanked him. Many hours are spent behind the scenes. They will be missed and he expressed his personal thanks for the work that they have done.

XII. ADJOURNMENT

Prior to the adjournment Mayor Hughes expressed from himself and the rest of the Council their very best wishes to Vice Mayor Ray Murphy and Councilman Garr Reynolds along with health, happiness and prosperity to them and their families on future endeavors.

The meeting was adjourned at 8:15 p.m.

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.

Respectfully Submitted,

Shannon Miller
Transcribing Secretary