

**FORT MYERS BEACH
TOWN COUNCIL MEETING
DECEMBER 3, 2001
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The regular meeting of December 3, 2001 was opened by Mayor Daniel Hughes on Monday, December 3, 2001, at 6:30 p.m..

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

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 SWFL

Reverend Dick Tafel gave the invocation.

IV. INTRODUCTION OF TRANSCRIBER SHANNON MILLER

Shannon Miller came forward and was introduced to the Town Council by Town Manager Marsha Segal-George.

V. PUBLIC COMMENT ON AGENDA ITEMS

Anita Cereceda came forward to discuss Agenda Item E regarding the Council Policy and Procedures on public comment. She gave a brief historical perspective, since none of the present Council Members were on the Council at the time this policy was put into place. The meetings were running very, very long. The reason the original Council decided to have the Policy of comments on strictly agenda items at the beginning of the meeting was to set the tone for the Council meeting. This allowed the Council to get the public's opinion on the upcoming topics. At the end of the agenda people could discuss whatever they like. The Town also made a point to have public comment at two points on an agenda, instead of only one like in other cities. This will allow for plenty of public input. The meetings need to be run as expeditiously as possible, so the work can be accomplished in a comfortable time for people who are sitting in the audience. She urges the Council to not change the current policy for public comment on agenda items that is currently in place.

VI. CONSENT AGENDA

- A. Resolution: setting the hearing date on a petition to vacate**
- B. Review of Financial Reports: October 2001**
- C. Approval of auditor's contract for Water Utility**

MOTION: Made by Councilman Howard Rynearson and seconded by Councilman Bill Van Duzer to approve Consent Agenda Items A & B.

VOTE: Motion passes unanimously.

**** The meeting of the Town Council was adjourned and reconvened as the Board of Directors for the Town of Fort Myers Beach Public Works Services, Inc.****

MOTION: Made by Vice Mayor Terry Cain and seconded by Councilman Howard Rynearson to approve Consent Agenda Item C.

VOTE: Motion passes unanimously.

MOTION: Made by Councilman Bill Thomas and seconded by Councilman Howard Rynearson to adjourn the meeting of the Town of Fort Myers Beach Public Works Services, Inc.

VOTE: Motion passes unanimously.

**** The meeting of the Board of Directors was adjourned and reconvened as the Fort Myers Beach Town Council.****

VII. ADMINISTRATIVE AGENDA

A. Public Hearing: Ordinance 01-09-Cable Ordinance

Deputy Town Manager John Gucciardo discussed that at the last meeting it was indicated that they would be having ongoing negotiations with the attorneys for Comcast. This was the reason for continuing the item from the last meeting, and anticipated continuing the item until the December 17, 2001 meeting.

Attorney Dick Roosa was disappointed that he was unable to communicate by e-mail with the attorney, but he did send them a copy of the ordinance by e-mail. There is a meeting scheduled this week and he will have an opportunity to talk with them regarding the differences. The proposed draft they have has substantial differences between the County ordinance, and what they are proposing. He will be able to report the results at the next Council meeting.

Mayor Hughes expressed that the existing Franchise Agreement expires on December 31, 2001. If they do not approve it at the next meeting they will have to take an alternative action to extend the franchise. Attorney Dick Roosa replied that they can approve the resolution and it will then be up to them to accept or reject it.

Mayor Hughes opened the public hearing and asked if anyone wished to address the Council. He went on to read Ordinance 01-09 - Cable Ordinance. No one came forward to address the Council. Mayor Hughes announced that they will continue the public hearing until December 17, 2001 at the regular meeting of the Town Council at 6:30 p.m..

B. Continued discussion of Cable Franchise Resolution

This item will also be continued until the December 17, 2001 Council meeting.

C. First Public Hearing: Ordinance 01-10 Amending the Beach and Dune Ordinance

Mayor Hughes indicated that there is only one amendment and it deals with the provision in Section 7A2, which provides that furniture and equipment must be moved either behind the dune line, where no dune line is present it must be 200 feet from the water line or where the beach is narrow to the adjacent permanent structure. The new provision is landward of any seawall. This will cover any situation where the seawall is closer to the water.

Town Manager Segal-George expressed that this is from May 1 to October 31.

Mayor Hughes asked if anyone wished to address the Town Council. None was heard.

Town Manager Segal-George indicated that they are going to incorporate the Beach and Dune Ordinance in the Land Development Code. A second hearing will not be scheduled for just this ordinance. It will come with the rest of the Land Development regulations.

D. Discussion of New Year's Eve Event: Times Square/Old San Carlos Alliance

Anita Cereceda came forward and discussed her memo provided to the Council. The purpose for the memo is to give an update. The Special Event Permit is basically complete, except for the Fire Department. The band that will be playing will be the John Chapman Swing Band. The Sheriff has signed off. They will hire four trolley's that will run for 8:00 p.m. to 2:00 a.m.. The trolley's are not specifically for the event, but they are for the event to move people around. They will run a regular route on the island. Hopefully, people will use this as a designated driver. Budweiser will be doing a designated driver program and providing all of the restaurants with O'Doul's that will be distributed for free to designated drivers. The ball will drop as it has in past years. The costs have been coming in lower than expected, except for the band. Everything is moving along quite well. She provided a map of the event area, which is the colored paver area of Times Square that has been designated as the event area. The Council has waived the enforcement of open alcohol containers within the area. She spoke with the Lieutenant of the West District and the West District is completely supportive of this. His attitude is that they have a contained designated area. She indicated that this does require an action by Council for this to occur.

Councilman Ryneerson asked if they could get the bottles of beer into cans or plastic containers. Anita Cereceda replied that in the past six years they have had an event for New Years Eve and have not had one incident that required law enforcement. She also expressed that she will bring up his concern.

Councilman Thomas had concerns with the increased cost of the band. He wanted to be sure that they are going to still be within budget. Anita Cereceda replied that other items are coming in for less. She feels the end result will be less in terms of money than she originally anticipated.

Vice Mayor Cain feels the pavers are a great area to contain people. She asked if there will be Sheriff's officials present? Anita Cereceda indicated that there would be officials present. They will be hanging signs with rope/tape that indicate "No alcohol beyond this point".

A discussion was held regarding the Pier, and if it should be included. It has never been an issue in the past and people have wandered out onto the pier.

Mayor Hughes indicated that he felt the Pier should be included, but subject to County approval.

MOTION: Made by Vice Mayor Terry Cain and seconded by Councilman Howard Ryneerson to designate the area shown on the sketch attached to the memo of Anita Cereceda dated 11/18/01, provided that the Pier area will be added to the checkered area and the Pier area will be allowed for open containers unless disapproved by the County.

VOTE: Motion passes unanimously.

Anita Cereceda invited all Council Members to be present at Midnight. She would like to have the Council present for the countdown.

E. Discussion of Council Policy and Procedures on public comment

Mayor Hughes began by stating that they have had several citizens coming forward at past meetings to address this matter. The Council Members have in their packets the relevant pages from Council Policy and Procedure manual. The motion would be to amend the Council meeting procedures.

Attorney Dick Roosa indicated that there is another change that was on hold. This would be located at the end regarding the confidential complaints of officials. This is a new provision.

MOTION: Made by Councilman Bill Van Duzer and seconded by Councilman Bill Thomas to institute the change under Item 3, line 4 regarding public comment. Also, to include revising Line 17.

Discussion: Councilman Van Duzer expressed that this has been brought to his attention by several people. They have asked that Council consider this. Many times in the past people have sat through Council meetings that were 4+ hours long. He feels that it needs to be done with reservation. He understands the input from past Mayor Cereceda. He would like to give this a try and see if it will work for the public.

Vice Mayor Cain is not sure if they need to make a policy change at this time. She has seen the present Council allow those to speak prior to the end of the meeting when they have expressed a great interest to discuss a matter not on the agenda. She indicated that they could possibly try this, and if it becomes too burdensome they can revert to the existing policy. She feels that if someone felt strongly enough about an issue they would contact her and she would put it on the agenda for the input of everyone. She would like to test the waters, but is not convinced they need a policy change at this time.

Councilman Rynearson agrees with Vice Mayor Cain. He would be willing to go along with trying it for 3 months and limiting the time to 1 minute. If a person cannot express themselves within the 1 minute time frame it should be put on the agenda for a meeting down the road. This would be a fair test.

Bill Thomas supports this amendment. He has been attending meetings for the last two years and feels that attendance has been very poor. He feels that they need more citizen involvement. The way to get more citizen involvement is to allow them to speak at the beginning of the meeting. The citizens of this Town have a lot to contribute to the Town and to this Council. He feels that the citizens are entitled to speak at least 3 minutes. A lot of citizens on the beach have made comments that they would like to attend the meetings to make comments, but cannot stay to the late hours.

Mayor Hughes is closer to Vice Mayor Cain's views. He has some serious reservations. He indicated that they had one gentleman state that they were violating his constitutional rights by limiting him to 3 minutes. Council allowed him to speak and he spoke for ½ hour. He feels that

back in the days of past Mayor Anita Cereceda more people were coming forward with input than they would be today. He agrees with Councilman Van Duzer that this can be accomplished as a trial. He has a concern of upholding to the 3 minutes of speaking time. If it does not work he will likely be the one bringing it back before the Council.

Attorney Dick Roosa commented that the problem has not been so much what the citizen presents, but if it is an issue that generates discussion on the Council it will delay the agenda items. He feels that allowing them to speak is a good idea. After they have spoken the Mayor can indicate the item will either be discussed at the end of the agenda or be carried over to another meeting. This would expedite the matter.

VOTE: Motion passes unanimously.

Attorney Dick Roosa went on to discuss if an ethics complaint is filed against a public official this complaint is confidential until it has been resolved. However, the employment of an attorney is under the authority of the Town Council. In the past, a Council Member must announce that a complaint has been filed against them, and they need authority of the Council for representation. What is being proposed is if a complaint is filed against a Council Member or any public official they would contact the Town Attorney and the Town Attorney would make a determination if it is of a confidential nature.

Town Manager Segal-George expressed that this also includes the LPA and Committees.

MOTION: Made by Councilman Bill Van Duzer and seconded by Vice Mayor Terry Cain to change the Policy and Procedure Manual to include the items that have just been discussed as are listed.

VOTE: Motion passes unanimously.

VIII. COUNCIL MEMBER ITEMS AND REPORTS

Vice Mayor Terry Cain - Congratulated Bill Thomas, Bill Van Duzer and Howard Rynearson. She felt that this evenings party was great. She is very excited about the new Council. She sees a lot of hard work before the and a lot of good workers.

The LPA workshop took place last week.

She received an award from "Keep Lee County Beautiful". The reason she received this award was due to the hard working community. She took a minute to thank the community for doing the wonderful clean-up jobs throughout the year.

Mayor Daniel Hughes - At 4:00 p.m. this afternoon they had the first concert at Santini Marina Plaza. He felt that it was the largest crowd with 500 to 600 people. They had an outstanding entertainer. He was asked to welcome back the temporary visitors.

IX. TOWN MANAGER'S ITEMS

Town Manager Segal-George - Mentioned that the Town shares in the cost of the concert. They share 50/50 with Santini Marina Plaza.

Thanked her staff for their efforts with the inauguration.

X. TOWN ATTORNEY'S ITEMS

Attorney Dick Roosa - In July of 1999, a citizen of Fort Myers Beach purchased a home. They paid \$400,000.00 for it on the Gulf of Mexico. 15 months later this Council

amended the Comprehensive Plan. As a result of this amendment there \$400,000.00 home was worth \$630,000.00. In a 15 month period the house went 46% on an annual basis. They have filed an action and are levying a claim for \$360,000.00. This is the amount they felt the property should have been worth. This action starts out at an administrative proceeding, but goes all the way to a trial by jury. He asked that the Council would appoint Mike Ciccarone as the attorney to represent them in this matter.

MOTION: Made by Councilman Howard Rynearson and seconded by Vice Mayor Terry Cain to appoint Mike Ciccarone as the attorney to represent the Town in the above matter.

VOTE: Motion passes unanimously.

Attorney Dick Roosa went on the mention that the US Congress, President and the Supreme Court will meet tomorrow night in a time of reflection. He feels that it is appropriate for all citizens to consider a same move. They are setting a good example by this action.

XI. APPROVAL OF MINUTES: NOVEMBER 5, 2001

MOTION: Made by Councilman Howard Rynearson and seconded by Vice Mayor Terry Cain to approve the minutes of November 5, 2001 with a correction.

Corrections and changes to minutes:

1. **Mayor Hughes** - Page 7, under Town Attorney Items - 3rd sentence under discussion to read "He also asked if the accrued taxes will be paid by the seller?"

VOTE: Motion passes unanimously.

XII. PUBLIC COMMENT

Dr. Joe Croker came forward and discussed the public comment in the beginning of a meeting. He does not disagree with the decision made. However, he feels that it should be brought to their attention that even with the 3 minute rule it is possible to bring together enough people to tie up 1 ½ hours of time. The Council was elected to serve the public and to work on agenda items. They can only tolerate so much in one day. He feels that if he had a matter that needed to be heard by Council he would sit around the meeting to be sure they heard what he had to say at the end of a meeting. He feels that any other citizen with concerns could come to the end of the meeting to state their concerns.

Bob Gochee came forward to discuss the quality of sidewalks on Fort Myers Beach. He walks and bikes on the sidewalks and feels that the Town of Fort Myers Beach should have clean sidewalks.

XIII. ADJOURNMENT

The meeting was adjourned at 7:43 p.m.

Respectfully Submitted,

Shannon Miller
Transcribing Secretary