

**FORT MYERS BEACH
TOWN COUNCIL MEETING
FEBRUARY 22, 2000
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

Mayor John Mulholland opened the meeting on Monday, February 22, 2000, at 6:33 p.m.

Council members present at the meeting: Anita Cereceda, Daniel Hughes, John Mulholland, Ray Murphy and Garr Reynolds.

Town Staff present: Town Manager Marsha Segal-George, Attorney Richard Roosa.

II. PLEDGE OF ALLEGIANCE

Everyone recited the pledge of allegiance.

III. INVOCATION

The invocation was given by a reverend from St. Raphael's Episcopal Church.

IV. PUBLIC COMMENT

A. CHARLES WALDREN

Mr. Waldren lives on Lenell Road and asked for the installation of a sidewalk on this road extending from the rear of Eckerd's east to the end of the road. The approximate length of the sidewalk after the deduction of footage for existing driveways would be 1,420 feet. After construction of the projects on this road is completed, there will be 244 residents, which may make it the most densely populated side street on Fort Myers Beach. Sidewalks are needed for the many bicyclers and pedestrians, as well as wheelchair bound individuals who use this road to reach Santini Plaza, Eckerd Drugs, the trolley stop and the beach. Sightseers also add to the traffic on this road that barely allows for two-car traffic. Sidewalks would alleviate an unsafe and hazardous condition.

Mr. Waldren spoke a second time to advise that the cost of the 1,440 feet of sidewalk that would be required to take care of their hazardous situation would be approximately \$10 a foot, or about \$15,000.00.

B. BOB WEIGAND

Mr. Weigand, another resident of Lenell Road, advised that he likes to walk or bicycle down Lenell Road. He noted that he rides his bicycle on the right hand side of the road and walks on the left hand side. There is a lot of confusion as to where to walk and where to ride on all of the streets here on Fort Myers Beach. He indicated that sidewalks would make for a safer condition and allows everyone to establish some priorities and ground rules.

C. GERALD ROBINSON

A resident of Bay Beach Lane, Mr. Robinson said he was here representing the EBIA, the Estero Bay Improvement Association as a board member and treasurer. They are the master association for Bay Beach, which includes Lenell Road, and represent 1,044 apartment units. They have afforded through their efforts most of the people in the Bay Beach area with sidewalks and a safe condition for walking and riding their bicycles. He would like for members on Lenell Road to be afforded that same privilege.

D. LARRY PEARCE

Mr. Pearce resides on Lenell Road and is the director of three of the condo associations. Because of construction at Santini Plaza, one of the two entrances from Lenell Road is now closed. The entrance at the intersection of Estero Blvd. and Lenell is a real difficult thing for

pedestrians and cars to navigate and they would appreciate anything that the Town can do to help them.

V. CONSENT AGENDA

A. Resolution Aircraft Noise

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to approve the consent agenda.

Discussion:

Mayor Mulholland advised that we had a resolution before us providing for a request from the Town of Fort Myers Beach to the FAA Flight Controls. We are asking that the FAA modify a manual that the pilots use to request that they come in at 3000 feet and not the lower heights that they have very frequently been coming in at.

Vice Mayor Hughes said he had no problem with this resolution except that the actual language in the manual contains an exception for inclement weather. In other words there are times when they cannot in fact maintain 3000 feet by reason of a low ceiling. Attorney Dick Roosa said he didn't think we would have to change the resolution but that we should understand that that is an exception in terms of their own FAA regulations.

Councilman Reynolds noted that the 3000 feet height ruling would apply until they reached the coastline.

The motion passed unanimously.

VI. ADMINISTRATIVE AGENDA

A. Request and Petition for Sidewalk on Lenell

Mayor Mulholland noted he had received a petition addressed to him and that the Council had received copies. He said he thought that the request for sidewalks was part of the infrastructure of our Town and believes this is the first request for sidewalks.

Vice Mayor Hughes advised that we adopted a blanket resolution that if we make any public improvements, that they have to be on a dedicated right-of-way or an easement. He has no facts regarding the right-of-way of Lenell Road, how far the sidewalk has to be from the pavement. He believes the normal width of the sidewalk is four feet and that there is a standard traffic engineer requirement that it must be so many feet from the pavement itself. Dick Roosa said it seemed to him that there are several questions, not the least of which is what would be the total cost for the sidewalk and even the design of the sidewalk. First off they need to determine if that's a public road or not and whether we do have the right-of-way and whether the road is the proper size, because if they're having difficulty with cars passing, it could be that it doesn't meet proper specifications. He believes it was built by the developer, but whether or not it was ever dedicated to the county, which would make it our road, he doesn't know. One suggestion would be for the Council to direct the Town Manager to come back with a report identifying those issues: what it would cost, how it would be financed, etc.

Mayor Mulholland stated that maybe a cost would be helpful to us, but he thinks the decision on how it would be financed would be something that the Council would work on. Would we ask the residents to pay 100%? Would the Town pay something? Would the developer pay something, or some mixture thereof?

It was established that we did have a policy, which Councilwoman Anita Cereceda said was just in principal as to what types of improvements were to be done in the Town and what percentage the Town pays. We had talked about it at our visioning workshop.

Councilman Reynolds referred to what we came up with a few weeks ago regarding Lazy Way and Palmetto. He thinks this is the closest thing to a policy that we have and it is

specifically addressed to sidewalks. But he wonders why a developer would build such a nice community back through there and not include sidewalks in their plans. If you drive the rest of the island, you will find there are very few streets that have sidewalks, and some have been here for 40, 60 years. But in this day and time he can't imagine building a new community without sidewalks being required.

Mayor Mulholland stated he would like the Town Manager to find out about the right-of-way and the public road and then give these folks some sense of what the Council may or may not do. He's sure that if we do something on Lenell, other roads within the Town will ask for the same.

Councilwoman Cereceda said she was looking at things in Spain while she was there that she felt we might do here. She feels that one of the most important aspects of a good government is to provide not only a safe environment for the citizens that it represents, but to also create a community that its citizens can thrive in. She sees sidewalks as a quality of life issue as much or more as a safety issue. If residents of any street were to petition the Town Council, she believes it would be our duty as a good government to provide safety and quality of life for our citizens.

Councilman Murphy said he agreed with some of the comments that were made that Lenell is a unique street. There are a lot of problems there as far as the way traffic and pedestrians converge together. By virtue of the fact that there are those problems and the people have gotten together as a group and put their petitions together to support this idea, he thinks that we should give them every opportunity to get together with us and see what we can do to put sidewalks down there. We should definitely move forward on this.

Vice Mayor Hughes said he thinks it's quite clear that there is a safety hazard there and that sidewalks are desirable, if not necessary, on Lenell. The problem that he has with it is establishing a policy here. We have a policy of related infrastructure in general and it's true that we didn't specifically discuss sidewalks. We did talk about it in terms of roadways though. He would like to be informed as to what our land development code provides. When Eckerd was put in, the county required as a part of the development order that a sidewalk be installed both on Estero Boulevard and on Lenell. Town Manager Segal-George advised that this was part of the Bay Beach development and all of that was basically grandfathered with how that original development was put together. The Council had the ability to put conditions on the Eckerd development. This development that has gone on in Lenell has not come in front of the Council in the same way. Right now, on our side streets, if you build a single-family home you don't have to put a sidewalk in front of the house. And with regards to the development that has been going on in Lenell, it's part of the Bay Beach development, so you've got densities on Lenell that would not be allowed today. It has not then come forward to look at the impacts on the street or whether or not we would feel the need to put additional conditions on it. This is because it was part of that original plan for Bay Beach, and we've never had an opportunity to address those kinds of concerns.

Vice Mayor Hughes said it has been his experience in recent years that almost every municipality has an ordinance that requires a sidewalk to be installed. They've even required them on single-family homes even if there were no other sidewalks. Somebody had to start it. And if there was an undeveloped lot, they had to put a sidewalk in. Mrs. Segal-George told him that we do not have that provision, to which he agreed. Mr. Hughes felt that we should examine our ordinances and see what, if anything, we should perhaps be proposing to the LPA for consideration. Town Manager Segal-George stated that if this had come forward in a modern CPD with regards to development on Lenell, we would have absolutely seen those conditions placed on that development.

Councilman Murphy reiterated that Lenell is a unique situation. And regardless of it's history, that is something that we inherited and we have to live with. Now we're faced with what we are going to do for those people in that bad situation. He thinks we have to kind of look beyond what has happened and decide what we're going to do now to bring it forward. Again, he

doesn't know how the financing is going to pan out, but we should work with the people to come up with a solution as quickly as possible. Mayor Mulholland said he agreed with him.

Town Manager Segal-George referred to the Palmetto/Lazy Way project and advised that that was a 50% cost share. With Lenell we have no knowledge of whether the neighbors would be willing to consider a cost share or whether they are petitioning the Town to pay all of it. She'd like to know that this has the ability to move forward before we even start doing the kind of research that would be necessary.

Mayor Mulholland felt that the Town should pay something and that the people and the developer should also pay something. Cost is important, but we should first determine if this is a right-of-way and a public road before we come to the cost.

Councilman Reynolds said the suggestion has been made to reference this back to the Town Manager to do some research on it. If staff could consult with Mr. Spikowski, he might shed some light on it. We have to know whether or not it's a private road before we can do anything.

Mayor Mulholland stated that we have to get some questions answered first. It's a high priority item with us, but it's a policy item also in that what we do for Lenell Road will also have a bearing on the rest of the island.

Town Manager Segal-George said she can bring this back by March 20.

Mayor Murphy said he thinks we have a few people here tonight who might be able to answer some of these questions off the top of their heads. He pinpointed Mr. Pearce, who is a developer, and also Gerald Robinson of the EBIA.

Gerald Robinson advised that Lenell Road was not one of their properties whose maintenance they were responsible for. They were told this specifically by Star Dial, the main developer of the road. Councilman Murphy asked him who provided the other sidewalks in Bay Beach. Mr. Robinson said he understands that The Palms was the first development in that area. The Palms and Star Dial paid for the initial sidewalk, which ended before The Palms property. And then just within the last year and a half they extended that sidewalk in front of Harbor Point over to the end of the property of The Palms and just before Waterside. The EBIA paid 25%, Star Dial paid 50% and The Palms at Bay Beach paid 25%.

Mr. Robinson was asked by Vice Mayor Hughes to refer us to the document that sets forth what the responsibility of his association is and where it tells them that they are not responsible for Lenell but are responsible for these other roads. Mr. Robinson advised that their legal document tells them that they are responsible for Bay Beach Lane, and they have been told that they have absolutely nothing to do with Lenell Road and that it belonged to, he thought, Fort Myers. They had been asked at one time to improve the lighting on Lenell. Mr. Robinson wanted to supply a name which the current board had told them would take care of the lighting, but he wasn't allowed to dialogue at this juncture with another member of EBIA to find out who that was.

Councilman Murphy ascertained with Mr. Robinson that the units on Lenell were a part of EBIA.

Larry Pearce stated that Lenell Road belongs to the Town of Fort Myers Beach. He doesn't recall the width of this right-of-way but he knows that there is adequate width to accommodate the two lanes of traffic as well as sidewalks. There are utilities running in that right-of-way also. The 244 residences on Lenell Road constitute around 25% of the revenues of EBIA. They pay the same dollars per unit per month as is paid for any other unit in Bay Beach. However, EBIA has historically dealt with only the maintenance of Bay Beach Lane, which is a private road and not a Town road, as well as the other common amenities of Bay Beach. So the budget of EBIA has been spent on those common elements, which excluded Lenell Road because it was a Town road. He personally doesn't see why EBIA can't return some of their dollars as a contribution to sidewalks even though it's a public right-of-way in cooperation on some basis for the Town and the residents of Lenell Road. Mr. Pearce further explained that the land was a part of Bay Beach

that was sold by Star Dial to various people who developed those properties. And if "the developer of the unit," such as himself, paid for putting the sidewalk in, then presumably he would have included that in the cost of the project and would have been paid by the people who bought the units. If they paid today in some way or helped, it's the same end result. Of that roughly 1400 lineal feet of Lenell Road that we're talking about for sidewalks, 84 of the 244 units are Windward Point where the road dead ends. So from the point of view of sharing, he thinks that they would probably feel that they would be responsible for whatever their share is based on the number of units, and not on the lineal footage that they utilize.

Councilman Reynolds said he thinks that the Bay Beach people are paying \$6.00 a month for each of those units and that amount is for the road and sidewalks. Mr. Pearce advised that it was now \$7.50 per unit, which takes care of Bay Beach Lane, the public road through the main portion of Bay Beach -- the lighting, the tennis courts, the fishing pier and the beach access. If Lenell Road had somehow been part of the private part of Bay Beach as opposed to being a Town road, then it would be in EBIA from that point of view. But it was always a public road.

Mayor Mulholland asked the Town Manager to please determine if the right-of-way is a public road and to assume in her research that there will be some contributions other than the Town's. He added that by March 20 we will hopefully have some more answers.

Vice Mayor Hughes noted that there are other things besides just lineal feet when building a sidewalk. There's topography, drainage, culverts, swale. Mrs. Segal-George agreed and said that's why \$10.00 a square foot is probably not a good price. She added that more than likely, to avoid some of the problems that happened on that sidewalk project on the south end, we would not want to do it the way the south end project was done. That means that we are probably going to have to deal with drainage and may have to pipe, which would increase the cost per square foot. They will look at all of that.

B. Discussion of 1998-1999 Audit

Mr. Marty Redovan discussed the financial statements. He referred to three reports that they are required to issue under Florida statutes and government auditing standards. They have rendered an unqualified opinion on each of the reports with no comments. The first report would be the general purpose financial statements, which in essence it's an unqualified "clean report," the highest that can be received; the second report would be one on internal control in compliance with laws and regulations, and there were no matters to be reported; the third relates to our state grants and aids appropriations and, again, there were no significant matters to report. They also reported that we were in compliance with the specific requirements of our state grants and aids appropriations.

On page 3 is the balance sheet for the Town as at September 30. As we can see, the Town is reporting a healthy financial position. The following page is the statement of revenues. The main audit differences between this and the monthly reports that are being submitted by Town staff are that they accrue certain revenues and expenses at year-end. Primarily through the year we are really operating on a cash basis, then they come in and do the accrual entries that we have to do under generally accepted accounting principles. There were also some clean up type adjustments, but those do not change the net excess of revenues over expenditures.

On page 5 is our budget to actual comparison. This is reported on a budgetary basis, and so it is utilizing the budget as adopted and amended by the Town Council with the actual numbers related to it to show us where the variances are. The more significant variances deal with the grant income and some capital improvement projects, a lot of which have to do with the Mound House.

The rest of the documents have the standard footnotes. As we look at this year-to-year, any major differences would come to light. There really aren't any. Note 5 on page 13 basically does a reconciliation between our adopted budget, the actual results, and then how they get back to that statement of revenue and expenses, because they have to report those in two different fashions: one under our budgetary basis and the other under the state chart of accounts.

Mr. Redovan was asked by Councilman Reynolds why they would put the \$4,000,000 in capital improvements in that line as expenses, as it's already being spent he supposes. Mr. Redovan said that if we look at it from a cash basis standpoint, even if we're buying a capital asset, we're basically spending the money. And in our budgetary presentation they anticipate so many dollars in through revenue and cash carry forwards and expect to use those funds for various and sundry purposes. In this case for the fiscal year just ended, they anticipated spending \$4,000,000 on various capital improvements within the Town, whether it be the Mound House, capital related road improvements, those types of things. That's going to cost dollars out the door so they are reporting that as an expense from that standpoint. Councilman Reynolds said he was having a problem relating that to Reserves; he thought that was in the Reserve file. Mr. Redovan said they're reporting that it was expected to be spent, and then below that we can see the fund balance of 3.6 million dollars and that ending of 1.2 million dollars. Those are really the reserves or cash carry forwards that we anticipated coming into this coming fiscal year if they had spent all the money that they had planned to in our '99 budget. Some of these projects didn't come to be and so the real carry forward is significantly higher than what they had budgeted because those projects did not come off the ground.

In the back is a management letter that they are required to report under the rules of the Auditor General. There are a couple of housekeeping type items noted there, as well as the Town Manager's response to those items -- again, nothing of significance.

Mayor Mulholland said some of the wording bothers him. On page 15 under Compliance it says, "We perform tests, etc." and asked what that meant. Mr. Redovan told him that these are standard reports on the government auditing standards, so the language is always confusing. What they really do is look at ordinances, grant contracts and other types of agreements that the Town has entered into and which, in their judgment, if we did not comply may have a material effect on these financial statements. However, their whole scope of the audit is not to give us 100% assurance that we're in compliance with every ordinance, law and regulation that may or may not affect the Town. They have to caveat that so that we don't look to him and expect him to cover everything, just those things that could be material to our financial statements.

Mayor Mulholland also asked Mr. Redovan if as auditors they look to see that the Town is receiving the correct amount of impact fees, or do they just say that the Town got so much in impact fees and this is what they did with it? Mr. Redovan said that they don't have the ability to audit the Lee County records and the building and zoning to go through and see if everything was remitted. What Lee County said they remitted to the Town in the form of park or road impact fees they make sure got reported in our books so that there's nothing missing in between. They have no way of going through the records to find out what should have been remitted by Lee County.

Mayor Mulholland asked if the filing and condition of the grant files was a new development or has it existed for a while. Mr. Redovan said he thinks it has evolved over the last couple of years just because of the volume of activity that Town management now finds itself in. There may be a better way to organize it based on application, response, follow up, etc.

Vice Mayor Hughes pointed to a confusing statement on page 1. Mr. Redovan said that the Government Accounting Standards Board and the American Institute of Certified Public Accountants define what type of procedures we can do on what's known as required supplemental information. What came up was whether or not the Town was going to be compliant for the year 2000, and in this particular instance, given that no one could give any type of assurance that when midnight struck we would be compliant, we cannot establish the criteria to allow a CPA to render an opinion that the Town's going to be Y2K compliant. But at the same time, just for history, the Government Accounting Standards Board said you will put this information in your financial statement. The result was that you can't say anything, but you have to put it in your financial statement.

Also noted by Vice Mayor Hughes was that in note 3 of the financial statement on page 12,

six different types of investments that we are authorized by law to invest in are listed. Then on the next page it shows the investments that we are in fact invested in. He wished to know in what category the Florida Municipal Investment Trust administered by the Florida League of Cities is in. He asked if that was an intergovernmental investment pool and not a governmental entity. Mr. Redovan advised that they're administering the program but it's actually a program among many governmental entities within the State of Florida. And they did obtain the documentation that the Florida Municipal Investment Trust is a qualified investment for the Town under the Town's policy. It is comparable to the State Board of Administration's pool funds. The Town more or less adopted the state statute, and he's not sure that they deviated too far from it. That question came up last year and they did look into it and are satisfied that it is an authorized investment for the Town.

Vice Mayor Hughes said he thinks these are very good reports and that they reflect that our Town staff has also been doing a good job, there being no irregularities reported and no recommendations that haven't been addressed.

Vice Mayor Hughes, addressing Marsha Segal-George, noted that on the payroll issue she brings up the fact that staff is getting paid on a Monday, not for the prior week but for the upcoming week. Her response was that they're a small office and found it more convenient to do payroll on a Monday rather than on a Friday when vendor payments are made. Mr. Hughes felt that if she does it on a Monday, the payroll should be for the prior week and not for the coming week. Mayor Mulholland said he didn't feel that the Town was at risk for any monetary amount even though we are paying in advance. Vice Mayor Hughes said that very frankly he's never known of a situation where employees are paid in advance. Marsha Segal-George said that they started this way four years ago when there were three of them and at that particular time they didn't have the same kinds of burdens that they have today. So her options are that she puts people in the office who are at a financial risk because they're short a week until everything catches up; that she comes to the Council and asks for more help in order to process all of the accounting on the same week or same day. Mr. Hughes indicated that he's satisfied now that he has more information than he originally had; that her response had just dealt with the fact that she didn't want to change from Monday to Friday.

Councilman Murphy stated that he thought this was a great report and he asked Mr. Redovan if he agreed with him after looking at the balance sheet that the Town was flush, and was told yes.

Councilman Reynolds asked Mr. Redovan if he were comfortable with the management letter.

Mr. Redovan replied that if we're comfortable with it, that's all that matters.

The question was put to Mr. Redovan by Councilman Reynolds regarding how he would report the fact if each of the councilmen now had a \$35,000 vehicle paid for by the Town. Mr. Redovan said he thinks the first thing they would look at is public purpose. Then they'd come back and look at what we did in an open forum to make that decision. Then it's a hard decision from there. It's a matter of consulting with the Town Attorney and they may even consult with their own attorney to see what if anything we should have done.

Vice Mayor Hughes wished to know if the auditors required an annual opinion letter from the Town Attorney. Mr. Redovan advised that they do request that and Mr. Roosa does respond. And if there is something with financial significance, it would be disclosed in these financial statements. If an accrual

were necessary, they would accrue the liability, etc. He doesn't recall that there was any pending or threatening litigation this past year that would have had an effect on the financial statement.

Mr. Redovan stated that he did appreciate the time that the Town Manager and John Gucciardo provide when they are in, and he wishes to let us know that Janeen has done a very good job of learning the accounting since Peggy has left, so the transition is good.

C. Public Hearing: Taxi Ordinance

The ordinance was read into the record by Mayor Mulholland.

Public Comments:

None.

MOTION: Moved by Ray Murphy and seconded by Dan Hughes to approve the ordinance. Passed unanimously.

D. First Reading: Amending Chapter 15: LPA

An ordinance amending the Town of Fort Myers Beach Code of Ordinances, Chapter 15, the Town of Fort Myers Beach Local Planning Agency Ordinance, Section 12, Rule of Procedures, providing authority, amendment to Chapter 15, Section 12, Rule of Procedures, providing severability and effective date.

This will be brought forth on March 6.

E. First Reading: Amending Chapter 16: MRTF

An ordinance amending the Town of Fort Myers Beach Code of Ordinances, Chapter 16, the Town of Fort Myers Beach Marine Resources Task Force Ordinance, Section 12, Rule of Procedures, providing authority, amendment to Chapter 16, Section 12, Rule of Procedures, providing severability and effective date.

This will be brought forth on March 6.

F. First Reading: Amending Chapter 17: PSTF

An ordinance amending the Town of Fort Myers Beach Code of Ordinances, Chapter 17, the Town of Fort Myers Beach Public Safety Task Force Ordinance, Section 12, Rule of Procedures, providing authority, amendment to Chapter 17, Section 12, Rule of Procedures, providing severability and effective date.

This will be brought forth on March 6.

G. First Reading: Amending Chapter 18: CELCAB

An ordinance amending the Town of Fort Myers Beach Code of Ordinances, Chapter 18, the Town of Fort Myers Beach Environmental Learning Center Advisory Board Ordinance, Section 12, Rule of Procedures, providing authority, amendment to Chapter 18, Section 12, Rule of Procedures, providing severability and effective date.

This will be brought forth on March 6.

Mayor Mulholland explained that we are reading these ordinances at this time because these are advisory groups that help the Council and we are changing the required number of meetings that they are going to have to a minimum of eight times a year. During the summer sometimes it is hard to get a quorum because people are away. They can meet more often, but for a minimum of eight times.

Vice Mayor Hughes asked if when we have something like this that is so clear cut and there won't be any substantive changes from the time of the first reading and then the second reading and then the public hearing, do we need to have them again in our packets? He would like to minimize paper work. Mayor Mulholland said he thought this was a good idea. It would save the Town money and the Town staff some time. We could just use this copy instead of printing up another copy. Councilman Reynolds noted that this was tried unofficially but several of the council members went to the office for copies. Vice Mayor Hughes stated that he thinks it's more important that council members have a copy and if we misplace it or fail to transfer it, then that could be a problem. He takes his out and keeps them in a folder by topic.

H. Review of informational piece on Charter Referendum Questions

Vice Mayor Hughes noted that Attorney Roosa has had an opportunity to review this and he said he had no problem with it except to suggest that in the provision under the first proposal changing it to say eliminating the cost of the Town of a run off election in December, saving the taxpayers' money.

Mayor Mulholland said he understands that this will go on the ballot to help the voters understand. Town Manager Segal-George stated that they were talking about putting an ad in the Observer or to try get the Observer to print it without us having to pay for it and to run it a couple of times before the elections so that people would have the ability to read this information and be better informed.

Councilman Murphy asked if as a Council we were going to endorse these two amendments. Attorney Roosa explained that the purpose of the advertising is for information and education only. But in this it just says incidentally that it was a unanimous vote to submit it to referendum.

Mrs. Segal-George said if we have to do it as an ad, she assumes we'll have to put some kind of "paid for by" on the ad.

Vice Mayor Hughes made note of the fact that previously we sent a newsletter to all the voters informing them of changes. Mayor Mulholland felt that an ad in the Observer might be a little cheaper. Mr. Hughes felt that in any event we would need the ad in the Observer. Last week he had discussed with John that if Proposition #2 passed changing the term of councilmen to begin at the first Council meeting after the general election, which would be in November, but Proposition #1 does not pass and there was a run off in December, we would not be able to really accomplish what Proposition #2 is trying to do because there would still be an unelected member. So he added a paragraph on the second page stating "It should be noted that to be consistent, an affirmative vote for Proposition #2 would require an affirmative vote for Proposition #1," or the reverse wouldn't be true. Proposition #1 could pass and eliminate the run off and then it wouldn't matter if our first meeting was in November or December. But if Proposition #2 passed, it would create an anomaly. Then he thought it would be good to actually show the dates, at least in the year 2000, how this would work in terms of the actual dates on which the events would occur, that is, the primary general election run off and when the terms begin.

Mayor Mulholland asked if the Council felt comfortable with putting an ad in the Observer containing this information, or if the Council felt we should have a mailing. He would be comfortable with either one but not both.

Councilman Reynolds said he believed the ad would have to be run anyway for legal purposes and it seems that would be the most efficient way of people seeing it. Councilman Murphy said he agreed. He would also make a suggestion that the Observer could maybe run an article in addition to the ad whereby a reporter would interview members of Council to get their opinions on these proposed changes to the Charter. And if we're all in agreement that these should be done, we can elaborate in those interviews as to why both have to be passed in tandem. Then maybe that would reinforce to the electorate why it should be done this way.

Vice Mayor Hughes stated that it would be nice if our new reporter who introduced herself to us this evening, Pamela Smith Hayford, would write an article on this in the News-Press. It would be most appreciated.

Mayor Mulholland said he thinks the will of the Council is evident: an ad in the Observer and perhaps whatever publicity we can get accompanying it.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Vice Mayor Hughes reported we had gotten a lengthy letter from Tom Myers of the Traffic Committee, which he thought was extremely well done in terms of outlining everything the committee has done. We also got a letter on our persistent Mr. Blumquist, who has now contacted the Florida Department of Transportation on the Mid-Island Causeway. What was

interesting to him was that the Florida Department of Transportation's response to that letter did not say anything about the fact that there is legislation banning any new causeways to barrier islands. In fact it encouraged Mr. Blumquist to go ahead and pursue this with the MPO. Mr. Hughes said he was in great accord with the letter written by Joel Sugar that appeared in the Mailbag in the News-Press last week saying we should have kept the ferry. Mr. Hughes wondered if there was anything further pending on this and was told no.

Vice Mayor Hughes said he would like to applaud the staff for executing the renewal lease with the Bank of America on the favorable terms that we discussed at a prior meeting.

Mr. Hughes asked if the Town Attorney or the Town Manager was going to comment on the initiation of conflict resolution procedures with Florida Water. Have we got that all set up? Town Manager Segal-George stated that the meeting on the utility is set for the 29th of February. They've had the meeting on the CRA. Right now they are trying to set the date for the joint meeting between the Council and the Board of County Commissioners. Attorney Roosa said it seemed fair to say that the county doesn't seem very enthusiastic about settling these cases, to which Mrs. Segal-George added nor setting the meeting with us either. If we go to court and we win, they have to pay the attorney's fees.

Regarding the correspondence between our Manager and the County Manager on withdrawing the permit and turning over control of Bowditch Park, it seems to Mr. Hughes that the county is making a point about this being a regional park. He doesn't believe there was any intent when we made this request in our prior discussion that we were going to in any way limit the availability of this park. It would still continue to be regional park. If this can be worked out to our mutual satisfaction and it came under our jurisdiction, it would still remain a regional park. They're trying to make it look like we're trying to grab it and make it our little park and it's no longer available to the citizens of the entire region. Town Manager Segal-George stated that she had had a meeting with John Yarbrow on those issues and he told her they were very interested in the Town taking over Lynn Hall, Bowditch and the beach accesses, even though there was a newspaper article that seemed to indicate differently. When she talked to Mr. Yarbrow after the article, he told her that he was misquoted. Councilman Murphy said he was the only one quoted in that article that Mr. Hoyer wrote. And he specifically told him when he interviewed him on the phone that the Town has no intention whatsoever of making that a Town park, it would still be a regional park open to everyone, and that didn't get into any of the quotes. Mrs. Segal-George said that those sentiments have been communicated to Mr. Yarbrow and to Mr. Stilwell.

Mayor Mulholland advised he had attended the Chamber Traffic Committee meeting, covering for Councilwoman Cereceda, our liaison. He was impressed with the people there who represented various parts of the county. He could be wrong, but he thinks it was a person from the Florida Department of Transportation who wondered if they should start the survey of banning the left turn in Times Square onto Fifth Street. Mr. Mulholland said he politely pointed out that he was the one who had asked for it and suggested that we have surveys done during the summer and had been corrected by the Traffic Committee who had said that the Florida Department of Transportation wanted to do it in season. They will start soon on the survey to look at whether to ban the left turn or to allow it as it is presently going. He will ask Anita Cereceda to track this item for him.

Mayor Mulholland said he gave the Council an article he had worked on for the Observer, which may appear tomorrow. It is a response to the Fire Control District questioning the safety of our streetscape project. The article assures them that we would do nothing that was unsafe or put our residents at risk.

Mr. Mulholland is also working on a plan to bring forward to MRTF and then to the Council a proposal regarding what we as a Town can or cannot do regarding canals. A rough count shows about 40 canals on our beach and two or three lagoons, and there are problems with many of them as regards silting and not allowing boats to go in and out.

Reported by Mayor Mulholland is that there is possible dolphin harassment in the Back

Bay. Dan Haggerty said he has evidence on video of people harassing the dolphins, which is against the law.

Mr. Mulholland thanked the staff, and principally Janeen, for help with his laptop computer. He also thanks staff for the website being set up and thinks it looks very very good.

Mr. Mulholland has been asked by several residents for his position on the sales tax. His position is that he's against it. He feels that they're trying to put on the backs of taxpayers impact fees that the developers should have been paying over the years. If it passes, and he doesn't feel that it will pass, then the Town will get some revenue and he'd be grateful for that. But he's against sales taxes and all increases in taxes.

Councilman Reynolds spoke regarding the article in the Observer, advising he was disappointed that only one councilman had been contacted and therefore only one view had been expressed. It would lead some people to believe that we were against parking up there, and that certainly is not so. He thinks that everybody on the island must know by now that he strongly believes that this issue should be put on the ballot if anybody has any doubts, and he believes that it will pass 90-95% of the people countywide.

Regarding the Town Manager's letter to Don Stilwell dated February 9, Councilman Reynolds said it was correct that Mr. Stilwell wants to pull the permits and not allow parking up there. He made a big error by voting wrong that day; but as all council members will acknowledge, the Town Council voted along with the county commission on two different occasions to provide parking at Bowditch. Some council members may have changed their minds, but he has not nor have circumstances changed. From time to time someone mentions that a garage may be built in Times Square. He looks at this as an interjection simply to confuse the issue. A garage is not the answer to Bowditch parking and any reasonable person would recognize this. No matter what is said about this issue, it's still a Lee County park and was purchased with taxpayers' money for public use. You cannot use it if you can't park your car. Presently no one can park there except the handicapped. He understands that the number of handicapped spaces have now been reduced and you can rent the extra spaces if you have a group party or something like that. So that leaves a number of spaces that you can actually lease there now. He would repeat that Bowditch is a public park and should be set up so that the public can use it.

Mr. Reynolds said he shared some of the concerns of the Fire Department regarding keeping the middle lane on Estero Boulevard open for right and left turns. The roundabouts may work and again they may not. This is something that should be cleared with Chief Markus, as a ladder truck is a very large vehicle. We cannot do something that would jeopardize response time.

Sean Holiday's name keeps cropping up in connection with the Mound House, Mr. Reynolds stated. He would like for staff to provide the connection. Town Manager Segal-George explained that when the Christmas events were done at the Mound House, Sean Holiday was the one who coordinated them. He is being paid on an hourly basis. When these kinds of events are coming up, we don't have the staff to run them and we have no director. So Sean Holiday did the Christmas event and he did the Valentine event.

Councilman Reynolds referred to Town Attorney Roosa's memo regarding no permit required to perform in Times Square. Could a freelance person go there and sell things? Mrs. Segal-George advised that this was the memo Mr. Roosa sent with regards to the religious performance in Times Square. We have never had a request like this and this was from the First Assembly of God who wanted to do a series of about six religious presentations. They wanted to set up in a particular portion of the Square. They wanted to use amplifications, speakers, and they wanted to present a religious type of play and then go out into the Square and offer testimony. When they made the request, of course, they made it very clear that they felt they had a first amendment right to make this kind of a presentation. It was referred to Dick Roosa with regards to how far do we have to go with allowing that type of presentation. Dick offered a legal opinion

that because of the religious nature of the presentation, he felt that the Town Manager had to issue the permit for them to give that performance. Mr. Roosa said that the reason we couldn't refuse them was we couldn't do it based on the content.

Councilman Reynolds advised that the Florida League of Cities did have their meeting as planned on February 18 from 1:00 p.m. to 3:00 p.m. in the Fort Myers Council Chambers. He attended this meeting and believes it was one of the best information presentations that he has encountered in a long while. He wishes more of the members could have attended. A gentleman there was a lobbyist but also the legislative chairman for the Florida League of Cities. On March 9 is another Florida League of Cities meeting at the Gulf Coast University. Dr. Merwin will be the speaker. This is a regular monthly meeting and staff and Council members are encouraged to attend. It is a luncheon meeting and will cost \$10. You must RSVP by March 3.

Mr. Reynolds asked Attorney Roosa if the Town Council and Town staff meeting with Mr. Yeager and the board of county commissioners on February 29 was in regard to the purchase of the Fort Myers Beach water system. What did we expect to accomplish at this meeting? Mr. Roosa said that on February 29 it is a staff meeting, not the Council. The meeting will include the County Manager and whomever he designates, as well as the Town Manager and whoever she designates. If it cannot be resolved with the staff, then it goes to the Council and the county commission.

Regarding the Mid-Island Causeway, Mr. Reynolds said he would encourage those members of Council to read the response to this approach several times. The District Secretary of the Florida Department of Transportation has studied it and given it some serious thought. He sent it to John Aylor of the MPO for further study and consideration. Mr. Reynolds said he didn't know that no more bridges would be allowed to be built to barrier islands because Marco Island is planning one right now.

Mr. Reynolds said that for the record and as a member of this Council, he strongly rejects the idea of rewriting the Council minutes. He read about five meeting minutes and believes they should stand as written with corrections, amendments and additions entered into the next meeting's minutes. If any council member wishes to make changes, such changes should be written and read to Council. They don't have to be approved, as they are that person's opinion. That council member's suggestions or corrections, etc., would become part of the official records without specific changes and rewrites that have happened over the past five meetings. Don't forget the tapes are the true records. He hopes that they are being protected from possible tampering, etc. He suggests that one set of tapes be immediately sealed and kept as a permanent legal record in case we have court cases, and that's the only time that particular records will be opened.

Councilman Murphy advised that some time ago he was asked to speak at a candidates' workshop in Bonita for the upcoming election to be held tomorrow evening. The first person to speak will be the city attorney for Naples and Marco, followed by the assistant Lee County attorney to speak on comp plans and zoning. Mr. Murphy will be followed by the assistant Lee County attorney speaking on gifts and lobbying.

Councilman Murphy noted that we're only a few weeks away from March 17, St. Patrick's Day. He has all his approvals lined up. They will plan on having the parade again -- the third annual Town of Fort Myers Beach St. Patrick's Day parade. The same format as last year is planned: beginning down at the south end of the island at Santini Plaza, assembling around 9:00 a.m. and kicking off promptly at 10:00 a.m. They'll march up the Boulevard to the Church of the Ascension where the parade will culminate in the church parking lot. He is putting the word out to all the various organizations who have participated in the past, and will be working toward getting some new participants this year to spice it up a wee bit. He will be down with the county this week as far as getting the necessary paperwork done and will be more than happy to do anything that needs to be done here with the Town staff. Hopefully, they can get one of those little blurbs in the local section of the News-Press, and he can be called with any questions. He

will also speak to one of the reporters on the Observer.

VIII. TOWN MANAGER'S ITEMS

Deputy Town Manager John Gucciardo advised that the Public Safety Task Force is planning a presentation by the sheriff's office on Thursday night, March 23, here in chambers. The presentation will be on frauds, cons and scams, designed toward some of the recent problems the sheriff's office has experienced that have been especially directed toward the elderly in the area. They're hoping for a good turnout. Along those lines, besides an invitation to Council, they also want to get some direction on whether or not it would be appropriate to use some of the money set aside in the committees section on the budget to advertise that. They're looking for some ads in the local papers and possibly a banner advertisement. If there is no objection from Council, they will take some money out of that line item for publicity and a good turn out for this event. Asked for an estimate by Mayor Mulholland, Mr. Gucciardo said the task force will be bringing that back to him at their next meeting on March 7. Mayor Mulholland asked if there was any objection to taking money from the budget, and there was none.

IX. TOWN ATTORNEY'S ITEMS

Attorney Roosa reported that he had received a letter today from the Florida Supreme Court, and they have set for oral argument the bond validation case for Thursday, May 11. He imagines that two of them will go up for the hearing. John Brannick is already up there and he will make the presentation. They will go up the day before to brief him. Asked if all briefs had been filed, Mr. Roosa said they had been. He will make copies of them for the office after he finishes using them.

X. APPROVAL OF MINUTES: DECEMBER 13, 1999, DECEMBER 20, 1999, JANUARY 3, 2000, JANUARY 10, 2000 AND JANUARY 24, 2000

MOTION: Moved by Ray Murphy and seconded by Dan Hughes to approve the minutes of December 13, 1999, December 20, 1999, January 3, 2000, January 10, 2000 and January 24, 2000.

Discussion:

Councilman Reynolds made comments regarding the minutes. On page 8 of the December 13 minutes, the motion at the bottom of the page is now different than previously given. It was the second part of his motion. The first part was to allow the sign to stay this season. Both parts failed for lack of a second. Dan Hughes then made a motion and on page 9 he withdrew it.

Councilman Reynolds said he would like to see the minutes come on through and not be held for two and a half months. If there are errors, we can make corrections and recommendations and get them to Council and let the corrections appear on the next minutes.

Mayor Mulholland said he has had a problem since the minutes have been changed every Council meeting. He has moved then not to subject the people that come here to go through the constant changes page-by-page, sentence-by-sentence almost of these minutes. He will take the blame for having these put where they are. As far as in a timely manner, he certainly agrees and was hoping we could get them through with some dispatch.

Mr. Reynolds stated that the two pages have been rewritten and do not represent in his opinion what and how issues happened in the Town Council on December 13. He strongly objects to this new plan of rewriting minutes.

Vice Mayor Hughes stated that there was no text changed from the draft that we originally got on the minutes of December 13, except that the language of the motions that were made to amend something was changed to where it actually occurred. Nothing of the actual discussion

was changed.

Councilman Reynolds said that some things were changed and that he was not objecting to them because he thinks they're good. For example, a motion was made and then goes into discussion. That wasn't done before. Then the motion is made again, and at that time is when we vote. That's a good procedure and he hopes we stay with that. What he's correcting is what was an error in the original minutes and is still in this. For example, on page 10 the first part was actually his motion. But, Mr. Hughes came back and made the same one and then added this next one to it.

Councilman Reynolds referred to the motion on page 8 regarding the noise ordinance. The motion was made by himself to rescind the motion forbidding a waiver of this ordinance. The motion failed for lack of a second. The secretary stated the motion and showed that it failed for lack of a second, which wasn't done on the other motion. When a motion is made, whether it passes or fails, it should be so stated in the minutes. This applies to the minutes of December 20, 1999, as well.

Referring to the motion on page 6 of the January 10 minutes, the original minutes showed a 4-1 vote when there were only four of us here. This was corrected to 3-1.

Motion passes with a vote of 4-0, as Councilwoman Cereceda left early.

Vice Mayor Hughes said he thinks that we now have the format worked out and we should not have this build up of minutes.

XI. PUBLIC COMMENT

None.

XII. ADJOURNMENT

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to adjourn the meeting at 8:47 p.m. Passed.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for action from the meeting of February 22, 2000

1. Motion passes that we ask the FAA to modify a manual that the pilots use to request that they come in at 3000 feet and not the lower heights that they have very frequently been coming in at.
2. The Town Manager is to do some research on whether or not Lenell Road is a private road. She will come back to us with information on March 20.
3. Amending Chapter 15: LPA. This will be brought forth on March 6.
4. Amending Chapter 16: MRTF. This will be brought forth on March 6.
5. Amending Chapter 17: PSTF. This will be brought forth on March 6.
6. Amending Chapter 18: CELCAB. This will be brought forth on March 6.
7. Regarding proposed changes to the Charter, the Observer could run an article in addition to an ad whereby a reporter would interview members of Council to get their opinions.
8. The meeting on the utility is set for the 29th of February.
9. On March 9 is another Florida League of Cities meeting at the Gulf Coast University. Dr. Merwin will be the speaker. This is a regular monthly meeting and staff and Council members are encouraged to attend. It is a luncheon meeting and will cost \$10. You must RSVP by March 3.
10. The PSTF is planning a presentation by the sheriff's office on Thursday night, March 23, here in chambers. The presentation will be on frauds, cons and scams
11. The Florida Supreme Court has set for oral argument the bond validation case for Thursday, May 11.