

**FORT MYERS BEACH
TOWN COUNCIL MEETING
MAY 15, 2000
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The meeting of May 15, 2000 was opened by Mayor Daniel Hughes at 3:03 p.m.

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

Member absent from meeting: Anita Cereceda.

Town Staff present: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo and Town Attorney Richard Roosa.

II. PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance.

III. INVOCATION

The invocation was given by the Reverend Bob Murphy.

(The Reverend Bob Murphy is the brother of Vice Mayor Ray Murphy.)

IV. PUBLIC COMMENT ON AGENDA ITEMS

None.

IVA. PROCLAMATION: NATIONAL SAFETY BOATING WEEK

Present were a number of officers from the San Carlos Power Squadron and they were asked to step forward while Mayor Hughes read the proclamation.

More Americans than ever before are heading to waterways for recreation and relaxation as opportunities for on-the-water activities expand each year. With this growth comes additional responsibilities. It is essential that both novice and experienced boaters practice safe boating habits, such as wearing a life jacket. This year's theme for the 2000 National Safe Boating Campaign, "Wear your life jacket, boat smart from the start," recognizes that boating safety begins long before your boat leaves the dock. Recent year averages indicate that approximately 88% of the people who drown in boat accidents were not wearing a life jacket.

WHEREAS, in recognizing that hundreds of lives could be saved each year by wearing life jackets, life jackets that are more comfortable, more attractive, more wearable than styles of years past, and

WHEREAS, the law requires that wearable life jackets be carried for each person on board a boat and little effort is put forth in wearing those life jackets,

NOW, THEREFORE, we, the Fort Myers Beach Town Council, does hereby support the goals of the National Safe Boating Campaign and proclaim May 20-May 26 as National Safe Boating Week in the Town of Fort Myers Beach and start a year-round effort to promote safe boating.

IN WITNESS THEREOF, we urge all those who boat to boat smart from the start by wearing your life jacket and practicing safe boating habits.

Signed by Daniel Hughes, Mayor, Town of Fort Myers Beach, this 15th day of May, 2000.

Mayor Hughes referred to an editorial in the News-Press this morning that he had found disturbing and that commented on the fact that there had been such little response on the census request. Listed and enumerated were the communities by the percentages that had been returned. Fort Myers Beach was absolutely the lowest in returns of the census -- only 33% of our residents have responded. This has a very negative impact on the community. We've noticed in the past that the crowd tends to dwindle once their matter is dissipated by the Council and, therefore, Mayor Hughes stated, if anyone present did not return his census information by April 30, that he should now wait until the census takers come to his home. He would ask us and any of our friends who are residents of the Beach to please respond.

V. CONSENT AGENDA

A. Review of Financial Reports -- April 2000

B. Proclamation: Florida Bar's Civility Month:

C. Budget Plan Resolution

D. Approval of Beach Restoration Project Contract: Cunningham and Associates

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

Discussion:

Councilman Garr Reynolds said he would like to deal with each item individually.

Mayor Hughes advised that hearing no second to the motion, we will proceed to deal with each item on an individual basis.

A. Review of Financial Reports -- April 2000

Councilman Reynolds said he'd like an explanation of some of this. On page 2 in the first column, Current Month Actuals, he doesn't get anything that will balance out when he goes over to the Year-To-Date Budget. He asked Deputy Town Manager John Gucciardo if that was the current spending month as it implies. If he multiplies the current month budget by 12, he should get the year-to-date budget. John Gucciardo said usually, but there are some items that are not 12-month items.

Councilman Reynolds also questioned regular employee's salary. He asked the meaning of "regular employees." He was told that that line item was for staff.

Mr. Reynolds pointed out that for 7 months ending April 30 the current month actual is \$7,100 and the current month's budget is \$33,400. How was this arrived at? Mayor Hughes said there might be an error there. The year to date budget is \$127,000 and 1/7 of that would be less than \$20,000.

MOTION: Moved by Ray Murphy and seconded by Terry Cain
to approve the financial reports for April 2000. Passed unanimously.

B. Proclamation: Florida Bar's Civility Month:

Councilman Reynolds said he was hoping this would be read to everyone by the Mayor because he feels that this is such a fine and outstanding thing.

This is a proclamation

WHEREAS, the open exchange of discourse is essential to the democratic system of government, and

WHEREAS, as a cornerstone of democracy, Americans have observed certain rules of behavior generally known as civility, and

WHEREAS, civility, derived from the Latin word civitas meaning city and civis meaning citizen is behavior worthy of citizens living in a community or in common with

others, and

WHEREAS, displays of anger, rudeness, ridicule, impatience and lack of respect and personal attacks detract from the open exchange of ideas, prevent further discussion of the

issues and can discourage individuals from participation in government, and

WHEREAS, civility can assist in reaching consensus on diverse issues and allow for mutually respectful ongoing relationships, and

WHEREAS, civility can uplift our daily life and make it more pleasant to live in an organized society,

WHEREAS, the city, county and local government law section of the Florida Bar urges

the adoption of a pledge of civility by all citizens of the State of Florida,

NOW, THEREFORE, be it resolved by the Town Council of the Town of Fort Myers Beach, that the month of May is proclaimed as civility month and calls upon all citizens to exercise civility towards each other. It should be particularly noted that this has been brought forth by the Bar Association of the State of Florida.

C. Budget Plan Resolution

This is the resolution to request funding for the fiscal years 2001 and 2002 from the State of Florida Department of Environmental Protection beach erosion control program in accordance with Florida Statute Chapter 161 for the Lee County long-range beach erosion controlled budget plan.

Councilman Reynolds said he wished all council members to know that we are working with Lee County in trying to set up a perennial type of budget plan to take care of our beaches.

Mayor Hughes said he assumes the county is adopting an essentially identical resolution and submitting it to the state. He was told "absolutely" by John Gucciardo. Mayor Hughes also inquired if we had resolved our interlocal agreement between the Town and the county as to the allocation of those funds. John Gucciardo advised that the interlocal that we entered into just indicates that we're going to use an economic analysis study that's been done as a basis of information to form an agreement to split the local sheriff funds. The delay has been that the economic analysis which was supposed to be prepared and delivered to us last October still is not completed. Until that is completed we really don't have the tools to begin the conversation.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to adopt this resolution. Passed unanimously.

D. Approval of Beach Restoration Project Contract: Cunningham and Associates

Mayor Hughes advised we had a memo from John Gucciardo to the Town Council attaching a copy of the letter of agreement relative to the work performed by Carol Cunningham. It outlines the scope of services. It's really the initial stuff in the beach renourishment program for the benefit of the citizens here today, and she's determining whether or not the tasks and costs related to assessing property owners for the beach renourishment includes developing the parcels and a rationale for methodology used to calculate the assessment actually calculates the assessment in preparing a document that explains that rationale for the public. The proposed contract is not to exceed \$7,575 at a billing rate of \$75 an hour. Also attached is an excerpt from the state statute regarding the procedures in the acquisition of professional services of this nature.

Garr Reynolds said of concern to him is the statement "One option is that MSTU is relative to private property owners either island-wide or just on the gulf side of Estero Boulevard." It seems to him that we should be gearing up to keep Lee County in this process with us because that's a major task and he would certainly not want to tax a small group of residents.

Deputy Town Manager John Gucciardo said that perhaps he wasn't clear enough in the memo. We're obviously in the process of negotiating with the county as to what their percentage of the local share will be, the Town's percentage of the local share, the TDC's percentage of the local share. Once we have formulated the percentages, the allocations and have a rough idea as to the total construction costs, the understanding will be that there will be some dollar amount that will be just the responsibility of the Town. After that is determined and after we have an idea of what the dollar amount owing to the Town would be, the idea was to present the Council with different options on how we would meet that obligation. One of those potential options was an MSTU, an MSBU traditionally allocated to the gulf front residents in the area where the beach would be renourished. He does not have the expertise to do that and that's where someone like Carol comes in. This will be only for a proportion of the percentage allocated to the Town.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to approve the beach restoration project contract with Cunningham & Associates. Passes unanimously.

VI. ADMINISTRATIVE AGENDA

A. The Nations Association: a presentation by the Reverend Israel Suarez

Reverend Suarez explained that the Nations Association was started in 1978 in Fort Myers, Florida. One of their many programs is collecting dry food. They run 21 services to try and help people who can't help themselves. Every summer they bring kids to the Fort Myers Beach area to have a good time. They are planning an activity day on July 15 and would like to have help from the restaurants.

Reverend Suarez asked Peggy Salverson from the Department of Children and Families to come forward. She advised that Reverend Suarez has invited the foster children in Lee County to come on an outing to Fort Myers Beach. These are children who have not had the privilege of loving parents taking care of them. In Lee County there are 200 children who have been abused and neglected. In the past they have had several foster families live on Fort Myers Beach. At present she believes there is only one foster family in this area. They are excited about the invitation to come to the Beach. Unlike other children, they have not had outings and picnics that would enhance their lives. The children range in age from babies to 18 years. Sixty-five percent of them are Caucasian, 33% are Afro-Americans, and then there's a small percentage of other nationalities. Their foster parents or counselors would come with them.

Reverend Suarez said that any help we can give these children would be a blessing. They will need food.

Vice Mayor Murphy advised that he and Reverend Suarez sit on the Southwest Florida Regional Planning Council and they have also been friends for many years. The Nations Association is probably one of the finest organizations in all of Lee County as far as the support it gives the children and less fortunate in our community. Reverend Suarez asked to come and speak before the Council today and also to get the word out to anyone who would be inclined to help in this effort for a day's activity on the Beach on July 15, such as food stores and restaurants. They would also welcome volunteers.

Town Manager Segal-George advised us that we have funds under certain categories in our budget that would be appropriate if we wanted to help out with lunch or something like that.

Mayor Hughes told Reverend Suarez that he thinks he sees a consensus here that we are most willing to participate and contribute, but he would ask the staff through discussion with him to come up with what his specific needs would be for that day. At the next meeting they could bring that to us together with the estimated costs.

B. Emergency Ordinance: Restaurant Drive-Thrus

Town Manager Segal-George stated that while it was clear that we couldn't have a drive-thru restaurant in the overlay ordinance, there was no similar prohibition for the rest of the island.

On May 8 she had asked the Council if we wanted to have something prepared by Mr. Roosa with regards to this issue, and we requested that he prepare an emergency ordinance that would at this point prohibit drive-thrus. He has prepared this and it is in front of us now. This emergency ordinance is only temporary. We will have to prepare regulations to make this a permanent change in our Land Development Code if the Council so wishes.

The heading, Mayor Hughes said, is Emergency Ordinance Prohibiting Drive-Thru Facilities at a Fast Food Restaurant, Providing Authority, Emergency Findings, Amending Section 34-2, Definitions, Restaurant, Fast Food, Severability and Effective Date. The key language here is changing the definition of a restaurant, which includes an establishment whose principal business is sale of food in a ready to consume state, or off-site consumption which may contain drive-thru facilities, such as McDonald's, Burger King, Juicy Lucy and Checkers. It adds the words "may not contain" and strikes "such as McDonald's, Burger King, Juicy Lucy and Checkers.

Attorney Roosa noted that drive-thrus create stress on traffic. An emergency ordinance adopted by Land Use regulations has to have two public hearings. There will be one today and then it would be set for another public hearing at our June 5 meeting, when it could be adopted and effective for 60 days.

It would then become void unless in the meantime it had been referred to the LPA and gone through the typical channel of amendment to the Land Development Code and it came back to the Town Council after hearings before the LPA and again before the Town Council.

Public Hearing:

Beverly Grady said she is representing AFA Rental, Inc. She received a copy of the ordinance this morning and the agenda. She referred us to Section 166.041(3)b which sets forth the procedures for the adoption of ordinances and wherein the state statute takes away the ability to amend by deleting or by adding prohibited uses. The fast food restaurant with a drive thru is a permitted use today in several commercial districts, including the C-1 district. Property owners should be notified of a hearing before any changes to their rights are submitted. There should be two advertised public hearings, one of them after 5:00 p.m. on a week day so that working people can appear before the Council. She has not heard anything today that would fall within the parameter of an emergency and she would object to our treating this as an emergency. She would request that this go through the same process under Land Use regulations that we have used to change other ordinances: staff review, the LPA, then Town Council.

The property in question is the Texaco station on south Estero Boulevard.

Attorney Roosa said that it says in Florida Statute 166 that emergency procedures are not to be used for Land Use changes. It refers you to Chapter 163 and that's why we're complying with the two public hearing requirements. He doesn't think it totally prohibits the adoption of this ordinance. It prohibits under the procedures of a normal emergency ordinance. We've addressed the problem of procedure by setting this down for a second public hearing.

Mayor Hughes said he thinks that the most important issue is does the Council determine that there is an emergency. Absent this determination, then we can't adopt an emergency ordinance.

Town Manager Segal-George advised that she has a third LPA meeting in May at which time she can bring this change to them, and we can still have two hearings in June before we take our summer recess. Mayor Hughes said he feels that this would be the appropriate thing to do.

Vice Mayor Murphy said that a property owner should be able to rely on what is on the books today.

Councilman Reynolds said he agrees that there is no emergency here.

Town Manager Segal-George said there are two issues. One is the issue of drive-thrus for fast food restaurants on the island outside of the overlay. The other issue will revolve around this independent case because there are issues in the comp plan with regards to this parcel and what

may be intended irrespective of the drive-thru. More than likely this case will end up in front of the LPA, in front of the Council and we will get to decide exactly what we think of it.

Vice Mayor Murphy said that the comp plan issues in themselves could trigger a hearing.

Town Manager Segal-George said we thought that we could not have a drive-thru restaurant on the island but found out that that's not true. The second issue has to do with this particular location. At a public hearing the community will have an opportunity to also speak. Noted was that this would go to the LPA as a regular regulation. The LPA is having a meeting May 30 at noon and that would enable this to get in front of the Council in June.

MOTION: Moved by Dan Hughes and seconded by Garr Reynolds that this matter regarding the definition of a fast food restaurant and the prohibition of drive-thru facilities in areas in addition to the overlay area be referred to the LPA for hearing.

Motion passes unanimously.

C. Public Hearing: Beach and Dune Ordinance

This is the second hearing on an ordinance establishing the Fort Myers Beach and Dune Management Ordinance, providing authority, title and citation definitions; purpose and intent of the ordinance; destruction or diminishment of dune or beach system; trash and litter on the beach; beach furniture; beach raking and rack line policy; vehicular traffic on the beach; dune systems; severability and effective date.

Terry Cain explained that there were two issues here: the Beach and Dune Management Plan and the other is in regard to dry sand/wet sand, which was referred back to the Marine Resources Task Force. She advised that the MRTF is composed of 13 members, 7 of them members of Fort Myers Beach. This is a group of very talented people with extreme knowledge of beaches, aquatic preserves and barrier islands. The expertise that the Town gets from this group is given without charge.

Mrs. Cain referred to the minutes of the MRTF workshop dated February 24, 1999. She read from the minutes a section on beach raking and the rack line policy in which it is noted that the use of box blade raking was banned by the DEP. Beach raking was not being taken away, only box blading.

The wording under Section X., The Dune System, was highlighted. Indicated was that the planting of oats would be encouraged but not required.

Vice Mayor Murphy expressed his surprise at all the e-mails and letters that have been received over matters we thought had been resolved.

Public Input:

A. Harold Douglas

A resident of Sandarac, Mr. Douglas said he has owned his place for 23 years. He remarked that he had sent out e-mails and the only reply he had received came from the Mayor but was signed by Anita Cereceda. He wished to know if her statements reflected the opinions of the rest of the Council. Mayor Hughes told him that no one council member speaks for the rest of the Council.

Mr. Douglas also stated that when you capitalize on the Internet, that means screaming. If we learn a little bit of etiquette, it might help us in future dealings.

Mrs. Cereceda said our beach is not going to change. When asked for assurance of this, she said yes. He's therefore listening today to see that his beach is not going to change.

B. Al Dulcharski

Mr. Dulcharski identified himself as the past president of Sea Watch on the Beach. He said that it is what we failed to mention that worries him. When he read our ordinance he

didn't see anything about raking. We received a letter from Sea Watch because they don't want a dune system and wish to leave their beach the way it is.

Regarding beach furniture, he'd like to know who is responsible for requesting that they move their furniture back 300+ feet, which would put it 10 feet high in front of their place. As far as he's concerned, this is an attractive nuisance. They are a time share with different people coming in every week. A child might decide to climb the 10-foot high pile of furniture and he wouldn't want to be responsible for any injuries that occurred.

As far as the rack line, there is a tremendous odor coming from it. Once they could rake it up and the county would remove the debris. Now they can't touch it unless it gets to be a health hazard.

Terry Cain referred him to Section VII., A., 1, of the ordinance where it says beach furniture and equipment must be removed from the beach between the hours of 9:00 p.m. and 7:00 a.m. Children shouldn't be on the beach during those hours. She advised that one of the cabana vendors in his area helped write this ordinance.

The rack line on the average, Mrs. Cain said, doesn't become a problem. Generally the tide will come in and take it away. It will be raked during a red tide or during heavy wind and wave action.

C. Bonnie Fedder

A full-time resident of Sandarac, Mrs. Fedder said she thinks the reason we can't understand their concern about the dune ordinance is a matter of interpretation. Their interpretation probably differs from ours. Also our interpretation may change 15 years down the line because it is a little ambiguous.

Vice Mayor Murphy advised that when there is a question regarding the intent of a Council down the line, members go back to the meetings where the ordinances and laws were created and review the minutes, listen to the tapes, research all that transpired leading up to that to specifically identify what the intent was of that Council.

Mayor Hughes told Mrs. Fedder to refer us to a specific section of the ordinance that she feels is ambiguous at this point. Mrs. Fedder said that we said their beach would stay as it is, but Section V., line 3, refers to destroying or removing dune vegetation. The grass that grows up in the sand is a type of dune vegetation, and according to this we are not allowed to pull one of those little blades of grass in their white sand. If ignored, they will grow into large amounts of grass and end up like Little Estero with lots of vegetation. Mrs. Segal-George advised that if you don't have a dune, then you don't have dune vegetation.

Her other concern was whether they could rake. Attorney Roosa told her that our laws only tell people what they can't do and not what they can do.

D. Dick Kastner

Mr. Kastner said he was 99 years old and has been coming to the Beach for 50 years or more. He stated he has never seen the beach look as nice as it does right now. He doesn't know of a finer beach. He likes to look at the white sand from his first floor apartment. He would not like to see sea oats or anything else planted in the sand. He likes the idea of the sand being raked almost every day to keep it clean. He implores us to keep the beach the way it is now.

Mayor Hughes asked Mrs. Kastner to convey to her husband who is deaf that this ordinance does not require the planting of sand dunes on his beach because it is not an eroded beach.

E. Frank Schilling

Mr. Schilling of 6672 Estero Boulevard named the positive things he feels are being done. But he feels he has not heard a clear articulation of why we have the ordinance. He and other owners and renters do not feel that this is an appropriate ordinance, that the ordinance does in fact confiscate property rights because of how it defines sandy beaches as being right up to the vegetation line. The point that was made that we are not interfering with their property rights isn't borne out in this ordinance.

Section III. defines about 900 feet in front of the Sandarac that we now control. Many people own the beach to the high tide water line and this has been pointed out at many of the hearings. Bill Spikowski has told them in very direct words at least three times at three meetings "You may own the property but we will control it." That's what this ordinance does do. If we do not intend to confiscate property rights, then there's very little to regulate.

They pointed out many times that erosion will not be controlled by sand dunes. Ray Murphy pointed out on December 21, 1998, that the Marine Resources Task Force ought to consider what the scientific evidence showed, which is that sand dunes do not protect against erosion.

In the Hemerston & Moore engineering study, you can define erosion or non erosion pretty much as you want. There are erosion markers. The Marine Resources Task Force could simply define non erosion as being to a particular marker. This is what is being asked for and has not been done. We haven't picked any data points and, therefore, we haven't defined anything. Now we have the opportunity under this ordinance to call non erosion or erosion pretty much anywhere we want.

Section X., A., allows planting of dune systems. The e-mail that went out saying that we aren't going to change the beach is absolutely incorrect, because Section X., A., says you can plant dune systems from the edge of the owner's property to the water. You have no restrictions. When asked how they would keep exotics, trees and shrubs from growing up in there, the MRTF said that's a problem.

Dune vegetation can be found anywhere. Basically what this ordinance is saying is that whatever grows on dunes you can't do anything about it.

The ordinance has not defined everything to everyone's satisfaction. We will have a very different beach if this ordinance is implemented.

Mr. Schilling made additional points against the ordinance, including raccoons, snakes and other critters getting into the dunes. He asked why we don't have an environmental study to assess the impacts on humans before changing our beach in the erosion areas or wherever. Who's going to carry the liability for bites from pests?

Mr. Schilling said that they want to sit down and talk to a Marine Resources Task Force that will listen to them and work for an amicable solution that we can all live with. All the issues he has mentioned today have already been pointed out in written form to the Marine Resources Task Force but without much recognition.

Mayor Hughes asked Attorney Roosa if Sandarac's fee title continually moved out with accreted property. Attorney Roosa said he thinks the general rule of law is that it would, but you would have to look at the specific deed. You can't apply a general law to a parcel.

Councilwoman Cain noted that Fort Myers Beach hasn't changed much in 20 years, with the exception of Bowditch Point at one end and Little Estero Island at the other end. Dune line vegetation is not going to grow to the sea unless we have a storm that erodes that beach area away.

Town Manager Segal-George advised that if the Town authorizes a renourishment project and that is done, the federal money that we receive requires us to put dunes in where we renourish the beach whether we like it or not. The ordinance was worded so that it would be clear to the folks on the south end of the island that we're concerned about this. That if they have a beach that is not going to have to be renourished because there is no erosion, that they will then not have to have any kind of dune system if they don't want one. Mr. Schilling said they have told the Marine Resources Task Force to just put marker numbers down to define what is erosion.

Councilwoman Cain said the reason why markers are not specifically stated is because a barrier island is a dynamic area. The sands shift all the time. Today's erosion problem may be tomorrow's accretion problem.

F. Heather Stafford

Mrs. Stafford is the Estero Bay Water Preserve and Buffer Preserve Manager. She advised

that many studies have been done throughout the United States of the east coast dunes. She would refute the comment that dunes don't stabilize beaches. She is also a member of the Marine Resources Task Force and she doesn't ever remember a time where the Task Force members have said "Yes, let's go and do this and let's not do public hearings" (as Mr. Schilling had stated). Nor does she remember a time where the Task Force said "Yes, we want Bowditch Point along the beach," indicating that we wanted a system like Bowditch Point, which is not true. She has read portions of the comp plan, but she would like to see that quotation about when we reach the steady state of thickets across the beach. As far as private property rights, there are many agencies -- local, state, federal, government -- that regulate what you do on your own property, so she doesn't see that as an issue. If you don't think you can get regulated on your own property, then you don't live here. This is not a new thing. If property owners do own down to the mean high water line as it moves, the Town will be regulating what they are doing on their own property, but she doesn't see this as a problem since it happens all the time.

Regarding the definition of erosion, Mrs. Stafford said she has a problem with the markers because things change. You could make it subject to change or you could make it subject to previous years' aerial photographs or subject to how wide the beach was at a certain time if a certain point is actually eroding at a particular place along the beach. There could be a base line and if the beach changes and erodes from that base line, then maybe that could be included in the definition of erosion.

The Marine Resources Task Force never said that plants are going to grow in the rack line. It did say seeds do come up in the rack line, but like Terry said, they're not going to grow in the rack line. If they go up in already vegetated dune areas, they may start to grow, but you haven't seen and you won't see plants growing in the rack line.

G. Edward Hickey

Mr. Hickey said he is the gentleman who has the beach contract for everything that is north of Bill Perry to the Outrigger and he does the cabana rentals there. He asked why beach furniture must be removed 350 feet during turtle season. Town Manager Segal-George explained that this was a negotiated amount between Bill Perry and Eve Haverfield, who represents Turtle Time, so that turtles will not be caught in the furniture and equipment. Mr. Hickey felt that 350 feet was too long a distance.

Mayor Hughes said that in light of these issues that have been brought up, what might be appropriate is that this matter be continued so that we can address specifically several of these issues that have been brought forward; and that if Mr. Schilling or his representative would like to present specific language, not just a general dissertation about the pros and cons of things, to amend or modify this ordinance, he would have the right to do so and the Town Council should consider that at a continuation of this hearing.

MOTION: Moved by Ray Murphy and seconded by Dan Hughes that this public hearing be continued to June 5.

Discussion:

Mr. Schilling said he would not be able to come to a June meeting because of a prior engagement. He asked for another date in June. Vice Mayor said they have been criticized for holding hearings when people aren't here and he would hope we could continue this while people are still here.

It was decided to continue the hearing until June 12.

MOTION: Moved by Ray Murphy and seconded by Dan Hughes that the hearing on the Beach and Dune Ordinance be continued to June 12 following three land use cases. Passed unanimously.

Mayor Hughes urged Mr. Hughes to submit specific language changes in the ordinance one week prior to the hearing.

D. First Reading: Animal Control Ordinance

An ordinance amending the Town of Fort Myers Beach Code of Ordinance Chapter 21 Town of Fort Myers Beach Animal Control Ordinance providing authority; amendment to definitions; deleting establishment of a Town pound; amendment to Town enforcement agency; prohibitions against cruelty to animals; adoption by reference Florida Statute relating to animal control, animal welfare and animal cruelty; deleting maliciously harming or killing animals; adding threatening or menacing behavior; deleting poisoning animals; adding vicious animals; fighting or baiting of animals; sterilization of dogs or cats; enter cats released from animal shelter facilities; nuisance animals; Muscovy ducks; nuisance concealment of animals; prohibiting animals from roaming at large; deleting failure to exercise control over vicious animals; amendment to failure to confine female dogs and/or cats in season; opposing an animal control officer or health official; damaging animal shelter facility; releasing animals; enforcement of violations; redemption disposition of impounded and unwanted animals; schedule of fees; providing or reporting of persons bitten or scratched by animals and quarantine of animals for rabies; observation; surrender of carcass of rabid animal; licensing and vaccination requirements for dogs, cats and ferrets; issuance of license certificates and tags for dogs, cats and ferrets; license fee; deleting attachment of license tag to the collar or harness of dogs; amendment to issuance of duplicate tags and transfer of owner; deleting substantive vaccination requirements; amendment to inspection of commercial animal statuses; disposal of dead bodies of owned animals; animals in motor vehicles; humane treatment of animals; adding new sections; impoundment of animals found in distress and guard dogs; providing severability and effective date.

Mayor Hughes advised that this is an amendment to our existing ordinance. Town Manager Segal- George said it will be set for hearing on June 5.

E. Extension of Pool Operations Contract

Deputy Town Manager John Gucciardo said he had attached a memo with a copy of the existing contract with Champion. This is just a recommendation or request by staff that the termination date be extended through September 30 so that it coincides with the fiscal year. Our intention is to bid this out again. Hopefully we'll get different responders along with Champion, who we fully expect to respond. And different options will be presented to us with the understanding that the new contract service provider, be it Champion or whomever, would kick in as of the new fiscal year starting October 1.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to approve extension of a contract with Champion Coordination for the operation of the pool facility through September 30 under the same terms and conditions as presently exist at the time. Passed unanimously.

F. Times Square Advisory Committee recommendations

Town Manager Segal-George reminded us that four years ago we received a tourism grant from the state for about \$200,000. We spent very little of it and this grant money can only be spent in Times Square. In fact, our auditors made a comment about the fact that we've had this grant money sitting around for a long time and have not spent it. This is one of the items that the Times Square Advisory Committee had discussed at their recent meetings. They looked at different issues in the Square and made a list for us of the items that they prioritize spending that money for. They have not costed any of these items because they wanted to bring this recommendation to the Council to see what we wanted them to proceed with as far as costing.

Mr. Whitaker, a member of the committee, is here to answer any specific questions. The recommendations are the following:

1. An underground wiring system.
2. Bigger grades for the palm trees.
3. A walkway between Times Square and Lynn Hall Park.
4. More benches in the Square.
5. Relocating the planters.
6. A marker in Times Square identifying it and giving it its name. The committee suggested a clock and perhaps it would say Times Square.

Bill Whitaker explained that the clock was brought up as an alternative to a fountain or some other identifying mark on the Square. It could perhaps be a clock on an 18-foot pole with 3 or 4 faces and that would chime every hour. This could be a significant landmark that would tie in with the Times Square celebration and things of that nature. Its prioritized location would be in the corner of that little circle as you come up from the beach so that it can be seen in both directions in the Times Square area.

There is a need to take out some vegetation close to the restaurants to give them more room. Some of this vegetative area is of little value and, in fact, hinders the placement of the tables.

The cost estimate for the clock is in the area of \$8,000- \$10,000. The worst case scenario for the cost of the underground wiring is \$20,000-\$30,000 if connected with the trees. Bill Semmer proposes doing the wiring right away. The cost of the benches is in the area of \$400 a bench. The benches would be made of a waterproof material and permanently attached to the ground.

The fountain idea was scrapped. Maintenance felt it would clog up the sand.

When tearing up the tree skirts to put in the pavers and the lighting, it was felt that they should allow for expansion of the trees.

MOTION: Moved by Ray Murphy and seconded by Terry Cain to direct the Town staff to proceed with costing on these items and move forward from there. Passed unanimously.

G. Coastal Advisory Committee and Agency for Bay Management appointment

Deputy Town Manager Gucciardo said this was an item that they needed to bring back to us so that they could fill the two appointments previously held by John Mulholland, one for the Coastal Advisory and one for the Agency for Bay Management. Terry Cain advised that the Agency for Bay Management meetings are on Monday mornings at the same time as the land use cases. She doesn't know, therefore, if anyone from Council could do it or if we need to get someone from outside of the Council. John Gucciardo said that the ABM meets downtown at 1500 Monroe the 3rd or 4th Monday of the month at 1:30 p.m. We're covered for the upcoming meeting by Anita Cereceda, but it's a position we need to fill as soon as possible.

Terry Cain said she would accept the ABM seat, but that there was also another seat that John Mulholland had held with the Charlotte Harbor National Estuaries Program. She herself is on the Citizens Advisory Committee.

Mayor Hughes asked Terry Cain if she could be a co-member on the Coastal Advisory Committee with Anita Cereceda and she said could do that.

There have been two submittals for the LPA vacancy but advertising continues. It will be brought back to us in June. Mrs. Segal-George said that on the CAC we might want to offer some kind of special gift.

H. Resolution: Supporting the Reapportionment Plan for the Lee County MPO

This resolution was brought up by Councilwoman Cereceda who is chairman of the MPO at a prior meeting. She expressed some concerns about it but she says in her memo that this does not affect our representation; however, it gives additional representation to the City of Cape Coral and they will have a disproportionate representation on the MPO.

Town Manager Segal-George asked Dick Roosa if he could prepare a resolution whatever is approved because we don't have one.

Vice Mayor Murphy said that in his eyes what's done is done and it's his recommendation that it's better to be supporting the group at this stage.

Dick Roosa said he thinks what Anita Cereceda is asking for is a simple resolution recommending the reapportionment that has already occurred.

MOTION: Moved by Ray Murphy and seconded by Terry Cain to support the reapportionment. Passed unanimously.

Mayor Hughes suggested that we adjourn and reconvene at 6:45 p.m.

B R E A K

VII. COUNCIL MEMBERS ITEMS AND REPORTS

Terry Cain reported on the fresh water inflow from the Caloosahatchee River. She has called the legal offices of the county to ask them if they were going to pursue and they said they still are under a couple of different applications. They will go for a policy and something else to try to stop the flow.

An article in the paper, Dan Hughes said, advised that they were giving to the staff the right to make adjustments in the flow at a meeting that they just held. If that's the case, how come they made adjustments in the flow on May 6? Terry Cain stated that they said they were going to allow the staff to do it and then they went back to letting one or two people make the decisions. Wayne Daltry went to Washington, D. C. to try and stop it and she hasn't had a chance to call and find out if he's back or find out what kind of results he was able to get.

Councilman Reynolds said he'd had a wonderful vacation out of town and feels more like his old self. He would like to welcome Terry Cain to the Council.

Mayor Hughes advised he had attended the Voice of Appreciation Breakfast held for the VOICE people. They were all given plaques for their voluntary service. He commented to them that our consultants, Wilson Miller, felt that the continuation of the VOICE program was an integral part of the long range plan here on the Beach.

The Crime Stop of the Southeast United States had their convention at the Diamond Head Resort May 8-10 and he attended. They are primarily law enforcement officers and volunteer workers that deal with the Crime Stoppers program, which is a citizens advisory program for the law enforcement personnel.

Mayor Hughes and Vice Mayor Murphy played in the golf outing sponsored by Hooters and Budweiser to benefit the Shriners and the off-shore boating. They did quite well and came in fourth.

The Southwest Florida delegation that Porter Goss hosts several times a year was very interesting and was attended by the mayors of Bonita Beach and Naples, a representative from Cape Coral, our local state legislators and state senators Connie Mack and Bob Graham. It was primarily input on what is going on with various federal legislations, but Mayor Hughes will copy the Town on a report of the events. Of particular relevancy were matters pertaining to shelter deficit, hurricane evacuation, beach renourishment and the Army Corps of Engineers matters.

VIII. TOWN MANAGER'S ITEMS

Deputy Town Manager Gucciardo said we should have in front of us a memo dated 5/10 about maintenance of the Matanzas Pass Bridge. In September the issue came forward as to whether or not the Town would be interested in taking over part of the maintenance obligation for the Sky Bridge. Staff has had conversations with Florida DOT and the maintenance people. As indicated in the memo, they are now at a point where they're willing to give to the Town, starting in their fiscal year beginning in July, \$4,000 a year paid quarterly if we would take over just part of the maintenance responsibilities -- the light maintenance. They would still take responsibility for anything of a major nature, including their mechanical sweeping which is supposed to be done every month. Staff is convinced that \$4,000 a year will not cover our expenses if we take over the maintenance of the bridge. Staff is looking to the Council for direction as to whether or not the benefit of being able to take care of the bridge and keep it maybe in a little better shape than we're getting now from the state would be worth the expense in addition to the \$4,000.

Vice Mayor Murphy said he thinks it's worth the expense. At least we know it will get done. When it's not getting done, we'll know who's not doing it. It's the entrance to our Town and should be looked after on a regular basis.

MOTION: Moved by Ray Murphy and seconded by Terry Cain to approve the staff recommendation of the agreement with FDOT. It would set forth what we would perform and that they would give us \$4,000 a year.

Discussion:

Councilman Reynolds said he believes no maintenance has ever been done except on certain occasions when it got really bad. It seems to him that if somebody could take that contract for \$350 a month to go back and forth there once or twice a week, that would be a great improvement, and he believes that \$4,000 would cover it.

John Gucciardo said it may, but he wanted to be up front with Council that we may be incurring expenses beyond that \$4,000.

Councilman Reynolds said that every time something comes up like this, we add another cash burden to the Town, and he thinks we need to tighten our belts a little bit and try to get some of these jobs that are more leisurely paced rather than paying top dollar for everything we do.

Mayor Hughes said that as he understands it, they've acknowledged they've only spent about \$2,000 a year on this but they've been able to obtain from the district \$4,000. So we have a bigger budget than what they've been expending in the past.

Motion passes unanimously.

IX. TOWN ATTORNEY'S ITEMS

Dick Roosa advised that last week on Thursday morning the oral arguments were held on the Murphy v. Lee County Bond Validation case. He listened to it over the Internet. By the way the questions were asked of the Supreme Court justices, it was obvious that they knew nothing about the case prior to oral arguments. What's so disheartening is that that same day they will meet and make their decision and then whoever is responsible will just write it up. However, he thinks our attorney did a great job, narrowing down the issues and emphasizing the constitutional issues, which are the issues that the Supreme Court most likes to discuss.

Attorney Roosa said our local state attorney saw fit to send one of his attorneys up there to the oral argument and to take the legal position that the bonds were properly validated and that our appeal had no merit. We'll see what the Supreme Court has to say. We ought to get an answer within a month or two.

Mr. Roosa said he has put a copy in our mailbox of the narrative of the local state attorney's office.

He confirmed that we had nothing on Bay Beach and that it was way past due.

X. APPROVAL OF MINUTES: APRIL 3, 2000 and APRIL 10, 2000

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to approve the minutes of April 3 and April 10, 2000. Passed unanimously.

XI. WILSON MILLER PRESENTATION -- Estero Boulevard Streetscape Project

Dr. Richard Woodruff stated that it was their pleasure as a staff to come and participate in this important community effort. At this meeting they will not ask the Town Council for any decisions. Tonight they will share with us information regarding dollars and cents. Three weeks from tonight they will be asking the Town Council to consider adoption of the master plan for the Estero Boulevard Streetscape. The components that will be in that master plan are the components that have been brought to us in the past. We will not see anything new. They are focusing on revenue, revenue sources, costs and, of course, on phasing.

If we look at traffic management, we will recall that we have adopted three different styles of primary traffic management techniques. Those are refuge islands, the neighborhood scaled roundabouts and the ball outs(?). In our approval we did not say which ones would be used where, but we looked at the general concept that specific points should have the primary traffic management technique. Then we have secondary techniques, which will have intensified landscaping on each side of the road at specific points or have an intersection with a lot of paving material so that people driving will realize there is something special happening there. The primary technique would cost roughly \$30,000; the secondary technique is roughly \$20,000. Dr. Woodruff explained how they arrived at these cost estimates. They cannot guarantee that these will be the costs and they are on the high side.

There are two designs for trolley stops. A primary trolley stop with a pull off is roughly \$60,000. A primary trolley stop without the pull off area is roughly \$44,000. The secondary facility is roughly \$12,000.

The recommended technique for the cross walks come in two fashions: the typical cross walk and the beach access cross walk. They will be putting in lighting on both sides of the street, have some type of surface treatment of brick pavers and inner concrete saddle. There will be significant landscaping. For the beach accesses each intersection will have major enhancements in the street area. A typical cross walk is about \$17,000 and it is roughly \$26,000 for a beach access.

Center Street/Fifth Avenue area: The infrastructure or basic roadway if built with asphalt roads and concrete for sidewalks and everything around the roundabout is projected to cost \$360,000 +/- . To put in medium sized landscaping would be estimated at \$50,000; larger landscaping would run around \$150,000, and larger yet would run \$300,000.

If we want to add brick pavers to the truck apron (the sloping part that comes from the surface and goes up toward the landscaped area) it will cost \$5,000. It would cost \$20,000 to put brick pavers in all of our cross walks. To put brick sidewalks throughout this area would be almost \$100,000. Brick pavers in the entire roadway system would cost about \$126,000.

Wilson Miller has tried to include in the elements the following things: All roadway work, drainage with curbing and sidewalks. In the low range they've assumed that we're milling and resurfacing the entire segment, that we're adding sidewalks that are made of concrete, a shoulder pavement is being installed, that we have curbs and that we have minor drainage improvements. In the high range they have assumed a total rebuild of the roadway with major drainage improvements. On the cost estimate for construction only without any design fees we should

assume a 20% contingency, as there are a lot of unexpected things that we could run into.

Dr. Woodruff discussed the boulevard segment by segment.

The north end is basically the 60-foot right-of-way area. It begins at the park area and comes generally down to the area of Center Street and Fifth Avenue. This area is estimated to cost between 1.9 million dollars and 2.9 million dollars to mill the road, resurface the road, install minor drainage improvements. If we have to totally rebuild that segment, which is almost 3,900 feet in length, it will cost almost \$1,000,000 more. In doing that we'd be installing a complete drainage system and building the road to those standards. On the other hand, in this segment there were no traffic management items. There were two primary trolley stops and two secondary trolley stops. We're dealing with roughly \$105,000 for trolley stop improvements. There are 7 recommended cross walks -- almost \$100,000. Lighting in this area is roughly \$57,000; landscaping, roughly \$92,000; utilities -- roughly \$750,000. Wilson Miller has assumed that we are going to underground our utility system.

Core area -- the 50-foot right-of-way zone that has about 4,000 linear feet in it. The low end cost for a concrete asphalt with a reasonable landscaping plan is \$410,000. The high end is almost \$960,000. There are four primary traffic management techniques at \$120,000; 4 primary trolley stops and 2 secondary trolley stops for about \$200,000; 10 cross walks for almost \$200,000; lighting for the entire 4,000 feet -- roughly \$114,000; landscaping -- almost \$550,000; utilities -- roughly \$800,000. Again, we're looking at \$3.4 million to roughly \$4.8 million. This area will be one of the real challenges from a construction standpoint.

Pacific complex with 50 feet of right-of-way. The area has roughly 4,400 linear feet. Roadway improvements on the low and high end. There is no gateway feature in this. There are two primary traffic management and one secondary traffic management techniques. There are four primary trolley stops and two secondary ones. There are 10 cross walks, the lighting, the landscaping and, again, the utilities. We are looking at from \$2.8 million to up to \$7 million.

The quiet center is a 65-foot right-of-way area. It is roughly 12,000 linear feet. For roadway resurfacing and milling -- \$2.3 million to a high of \$5.6 million. There are 3 primary and 9 secondary traffic managements; 6 primary trolley stops and 4 secondary. There are 17 cross walks. Lighting, landscaping and utilities in this 12,000 ft. area costs \$5.8 million - \$9.2 million.

The high rise zone -- 80-100 feet of right-of-way. There are over 7,000 linear feet, a roadway system, no gateway feature. Traffic management -- 4 primary and 3 secondary; trolley stops 4 primary and one secondary; cross walks -- 11. There is lighting, landscaping and utilities. Cost estimated at \$5.1 million to \$5.8 million.

The south end has an 80-100 foot right-of-way. Included in this area are the south gateway features -- a low of \$163,000 to \$355,000 for medium sized plants. Traffic management in this 4,000 ft. area is 3 primary and 4 secondary; trolley stops -- 4 primary and 1 secondary; cross walks -- 5. Lighting, landscaping and utilities. Total estimated costs \$2.3 million - \$3.8 million.

Dr. Woodruff reminded us that we're dealing with over 7 miles of roadway surface. We're dealing with our entire community. There is no project that we will ever undertake that will be more comprehensive than this project. For all the work we come to a figure of roughly \$21,000,000 to over \$30,000,000. This project includes every facet of taking our roadway systems, our utility systems, our aesthetic systems and building them. Are we obligated to do this? No. Are we obligated to actually reconstruct the roads to milling and resurfacing or to totally rebuild them? No we aren't. But they wanted to show us that if we do this to the degree that we may have to do it, that these are going to be our general cost areas. On the other hand, if we decide in the course of things that we do not want to do remilling and resurfacing of the entire roadway system but only portions of it, then we can certainly take this \$9,000,000 number and reduce it significantly lower. It's just that at this point they have to tell us what are our worst case scenarios. As we get into actually designing the programs, we may find that we do not have to do the level of all of these.

Revenue sources: We can use our current reserves and the Town's general revenues. We get state-shared revenues in several forms. There is the possibility of utility taxes and franchise fees. We have the ability to issue bonds as a community whether general obligation bonds or revenue bonds. Wilson Miller will show us in their final report on June 5 a list of grant sources that they think are reasonable. There are also special assessments and taxing districts. The community development approach has already been used on our island. Our CRA has lapsed, but as a city or town government we are authorized to go through the process again and set up our own CRA and then use its tax increment financing to help offset some of the costs.

Gas is being brought to the island next year. There will be digging that will impact the sidewalks and some of the roads. So there is definitely a possibility of working in a public/private partnership with Teco Gas so that as they rebuild sidewalks, instead of rebuilding them to their standards or to the standards that are out there today, we may be able to get them to turn that revenue over to us and we take the responsibility of rebuilding.

There are other public/private partnerships. Publix may be willing to do some things that will offset overall costs.

Donations: Several cities have set up a tree donation program. One of the major things we would have in this is landscaping. We could get hundreds of thousands of dollars worth of palm trees from people living on the island who want to get rid of them. We can set up a program where such a donation becomes tax exempt. This donated stock of trees is generally taller and more mature than we would buy. It would cost about \$250 a tree to have a professional transplant it.

The state of Florida has a revolving loan program for storm water improvements. Two years ago the revolving loan plan for sewer improvements was moved into the one for storm water improvements. By preparing a master storm water plan, we can get on the state's program for revolving loans where we can get money at low interest. It could literally save us millions of dollars in interest.

Dr. Woodruff said they tried to set up criteria with regards to phasing. They felt that improvements should start in the residential area first. He advised what could be done segment by segment. He reminded us that improvements cannot be done in areas not in our jurisdiction unless some other entity says that they can. He feels that one of the first things we should do is obtain control of Estero Boulevard. The second thing we should do is initiate discussions with Bonita Springs for the south end gateway without obligating ourselves. Thirdly, we should begin a tax exempt donation program. We should also establish a fund for citizen donations.

Phase I -- it is recommended that we hire a project coordinator. Mr. French pointed out that we should prepare a drainage survey and utility master plan and Dr. Woodruff explained why it should be done. Proceed with the design construction of the north end improvements.

Phase II-- Proceed with design construction of south end improvements. Also proceed with the design and construction of the Center/Fifth Avenue master plan.

Phase III -- Proceed with core area.

Phase IV -- Proceed with Pacific complex.

Phase V -- Proceed with high rise.

Phase VI -- Proceed with quiet center.

On June 5 we will be asked to consider adopting the master plan for the Streetscape program. This will give us guidance for inclusion in the Town's capital improvement program. Dr. Woodruff explained the capital improvement program.

Dr. Woodruff said he believed that by September we would be able to select a consultant and award a contract to begin our physical Phase I. At the same time we can begin immediately to discuss with Florida Power and Light their work and how much they will charge us to do the master study. In the drainage design work we should be able to see construction beginning January, February or March of 2001 and certainly by the spring of 2001.

Dr. Woodruff advised that this is a 7-10 year program.
Dr. Woodruff answered questions relating to drainage, etc.

XIII. PUBLIC COMMENT

A. JUDY HENCE

Mrs. Hence is from the Caper Beach Club. She reminded Dr. Woodruff that in one of his presentations he had mentioned a new system of lighting up walk ways when pedestrians stepped into them. Dr. Woodruff advised there were two types and gave the costs for these advising it was very expensive. Mrs. Hence felt that this system would be very beneficial in certain dark areas.

B. DOROTHY FRENCH

Mrs. French stated that Dr. Woodruff had used a substantial figure for lighting. She asked if that meant we were going to tear out the lighting that we just put in two or three years ago and replace it with something else or if the figure we were given is in addition to what we already have. Dr. Woodruff indicated that the type of lighting we would use would be our choice.

XIII. ADJOURNMENT

A motion to adjourn the meeting was made by Garr Reynolds and seconded by Terry Cain. The meeting was adjourned at 9:52 p.m.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for Action May 15, 2000

1. The Nations Association are planning an activity day on July 15 and would like to have help from the restaurants.
2. Emergency Ordinance for Restaurant Drive Thrus: It would be set for another public hearing at our June 5 meeting, when it could be adopted and effective for 60 days. Town Manager Segal-George advised that she has a third LPA meeting in May at which time she can bring this change to them, and we can still have two hearings in June before we take our summer recess.
3. May 20 - May 26 has been proclaimed as National Safe Boating Week in the Town of Fort Myers Beach.
4. The first reading of the Beach and Dune Ordinance has been continued to June 12.
5. The Animal Control Ordinance is set for hearing on June 5.
6. There have been two submittals for the LPA vacancy but advertising continues. It will be brought back to us in June. Mrs. Segal-George said that on the Coastal Advisory Committee we might want to offer some kind of special gift.
7. Three weeks from tonight Wilson Miller will be asking the Town Council to consider adoption of the master plan for the Estero Boulevard Streetscape. The components that will be in that master plan are the components that have been brought to us in the past. We will not see anything new. They are focusing on revenue, revenue sources, costs and, of course, on phasing.