

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JANUARY 4, 1999**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, January 4, 1999 at 4:02 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ray Murphy; Council Members Daniel Hughes, Garr Reynolds, and John Mulholland; 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 to the flag.

III INVOCATION

The Council was led in prayer by Pastor Tom Snapp of St. Peter Lutheran Church.

IV PUBLIC COMMENT ON AGENDA ITEMS

A AL VAN HORN

Mr. Van Horn spoke about the process of the land development code. He implored those who are putting it together to do a better job of communicating what is meant by the LDC. They owe it to the public to review it in detail and define it and how it relates to the Comp Plan. Is it just a number we are required to come up with to meet state requirements, and then we intend to get around it with variances?

B CEEL SPUHLER

Mrs. Spuhler added her endorsement to the recommendation by the MRTF that marker buoys be set out 1000 feet from Little Estero Island. Vessels come very close to shore there because the sandbar is growing so much. She wants to protect the swimmers who go out so far in order to find deeper water. Fort Myers Beach is advertised as the world's safest beach, and this action will help keep it that way. She also agrees with the ban on airboats.

C JOE CROKER

Dr. Croker spoke about the charter review committee that met in October. He was not able to be at that meeting. He does not agree with their recommendation regarding multiple candidates. Rather than a post-election runoff, the Town might want to consider the primary process. He also thinks it needs to be addressed that the current charter has no language that speaks to qualifications for appointment. There was a lot of innuendo about residency when Councilman Hughes was appointed, and that could be easily fixed by adding in section 401, line 22: "or appointment" after "prior to qualifying for election."

V COUNCIL REORGANIZATION

Mayor Cereceda thanked everyone for the incredible experience of being the Town's mayor.

Motion: Mayor Cereceda nominated Mr. Murphy for mayor and Mr. Mulholland for Vice-Mayor. Mr. Reynolds seconded the motion. The motion carried unanimously.

Mayor Murphy honored Ms. Cereceda for the outstanding job she did as mayor. He thanked his fellow council members for electing him mayor and said he was honored to be the second mayor of the Town of Fort Myers Beach. Mr. Mulholland said if there was no objection, he would like to ask the staff to get something to honor Ms. Cereceda for her service as mayor.

VI COUNCIL APPOINTMENTS

A. LOCAL PLANNING AGENCY

Mr. Murphy said he understands that Lena Heyman, Ron Kidder and Johanna Campbell have withdrawn their names for consideration. Each council member was instructed to vote for five names from the list of candidates and to sign or initial their ballot. The ballots were tabulated by the Town Clerk. The

Clerk announced that the new LPA members are: Jody Hester, Harold Huber, Betty Simpson, Linda Beasley, and Jennifer Kaestner.

B. CULTURAL AND ENVIRONMENTAL LEARNING CENTER

The Town Clerk tabulated the votes and announced that the new members are: Roxie Smith, Ceel Spuhler, Fran Myers, Helen Caldwell, Elizabeth Jordan, Terry Cain, Barbara Hill, Cindy Bear, Irv Solomon, Bill Grace, Penny Brown, and Corbett Torrence.

Motion: Mr. Hughes moved and Mr. Mulholland seconded that Mayor Cereceda be the liaison from the Council to the CELCAB for an indefinite term. The motion passed unanimously.

C. MARINE RESOURCES TASK FORCE

Mr. Murphy noted that Helen Caldwell has taken her name out of consideration. The Town Clerk tabulated the votes and announced that all present members of the task force were re-appointed and the new member to take the place of Ms. Caldwell is Gini Smith.

D. PUBLIC SAFETY TASK FORCE

The Town Clerk tabulated the votes and announced that all present members of the task force have been re-appointed.

E. CITIZEN'S ADVISORY COUNCIL OF THE MPO

Motion: Mr. Hughes moved and Mr. Reynolds seconded that Harry Gottlieb be appointed. The motion passed unanimously.

F. TECHNICAL ADVISORY COUNCIL OF THE MPO

Mr. Hughes said that he served on this committee while he was on the LPA and he encouraged anyone who is interested to come forward. It is technical and transportation-oriented. If no one volunteers, he would recommend that the LPA choose someone to serve on it. They meet once a month. Mr. Gucciardo said that at one time Mohsen Salehi had volunteered to serve and probably already attends the meetings. Mr. Reynolds said he would prefer it be someone from the town if possible. It will be advertised again in the newspaper with more detail.

VII. CONSENT AGENDA

A. ITEMS TO BE PULLED FOR DISCUSSION BY THE COUNCIL – Mr. Hughes said he thinks the consent agenda is a good idea and will save time, but he asked for clarification on a few items before the vote. Since this was the first time for the council to use the consent agenda format, Mrs. Segal-George explained that if something is pulled from the consent agenda for discussion, it goes back to the old agenda format and each pulled item will have a separate motion. Whatever is left on the consent agenda is handled under one motion. Mr. Hughes asked to pull the LeeDot, Animal Control and the Lee Tran interlocal agreements.

B. MOTION TO APPROVE BALANCE OF ITEMS

Motion: Mr. Mulholland moved and Mr. Hughes seconded that the balance of the items be approved. The following items were passed unanimously:

1. **Minutes:** November 16, and December 7, 1998
2. **Financial Reports for November**
3. **Contracts:**
 - a. **Spikowski and Associates**
 - b. **Weather Wagon**
4. **Agreement for traffic control deputies**

C. CONSIDERATION OF ITEMS PULLED FOR DISCUSSION

1. Interlocal agreement on Animal Control

Motion: Mr. Mulholland moved and Ms. Cereceda seconded that the interlocal agreement be approved.

Discussion: Mr. Hughes said there seemed to be a problem with the "hold harmless" clauses. There is no hold harmless clause in this agreement, but on road maintenance with LeeDOT there is a clause that the county hold the Town harmless and a reciprocal agreement for the Town. Mr. Roosa said that

different attorneys in the county attorneys office drafted these. When the question was raised earlier, he contacted the county and they agreed and take it out. This interlocal is a carryover from a prior agreement and it had that language in it. Mr. Hughes asked if he felt it was important to have it. Mr. Roosa said he did not think it would help the town. They are performing a service for us. Mr. Hughes said if the county shot someone's dog, what would happen. Mr. Roosa said they would sue both of us. Mr. Hughes said that if we had a hold harmless clause, the county would have to defend the town and we would not have to turn it over to our insurance company. Mr. Gucciardo pointed out that animal services have expired as of December 31. We thought this was already approved as to form. Mr. Roosa said he sees no problem if we incorporate the same language and add it since it hasn't been signed. Mr. Gucciardo said he believes it has already been approved by the county. Mr. Hughes asked if it was possible that the county would sign an addendum. Mr. Gucciardo said without knowing, he felt it was a practical matter that we need to sign it. Mr. Hughes said his point is the indemnification and the defense. We would have to tender a defense to our carrier and they would have to expend money to defend us and that would affect our premium. If we have a hold harmless clause, that would not happen and we would not have the litigation on our history of insurance. He suggested we leave it for Mr. Gucciardo and Mr. Roosa to try to negotiate that change with the county, but to go ahead and pass the agreement as it is tonight.

Amended Motion: Mr. Hughes moved to amend the motion to add direction to the town attorney to see if he could negotiate the agreement to include a hold harmless clause. Mr. Reynolds seconded the motion. **Discussion:** It was clarified that this was not a condition to signing the agreement. **Action:** The motion carried unanimously. **Action on the main motion:** The motion carried unanimously.

2. Interlocal agreement with Lee DOT - Mr. Hughes said this agreement has a hold harmless clause, but he has a question on Section 3b about posting and marking of the streets. Mr. Gucciardo said the sign crew makes runs through the town and sees if stop signs, street signs, etc are damaged or missing and they repair or replace them. Mr. Hughes asked about new signs, such as the ones on Shell Mound. Mr. Gucciardo said they charge for all of them, old or new. It is done on an as-needed basis. If no work is needed, there is no fee. Mr. Hughes asked about the preceding agreement exhibit A, where there are unit charges spelled out. On the new one there are no unit charges. Mr. Gucciardo said they were uncomfortable because the charges listed were high. When we request some work, we get a price first and approve it before the work is done.

Motion: Mr. Hughes moved and Mr. Reynolds seconded that the agreement be approved as submitted. The motion carried unanimously.

3. Lee Tran for expanded trolley service in high season- Mr. Hughes said in this agreement we are paying \$20,535 for those 2 ½ months of service. Where does it say the number of additional trolleys? Mr. Gucciardo said the current level of service anticipates trolleys about every half hour. During this peak season, the county adds a third trolley which increases it to about 20-25 minutes. What we are doing in this agreement is adding a fourth trolley which brings it to about every 15 minutes. The trolley runs from Bowditch to Lovers Key. Mr. Hughes asked if we wanted to add a fifth one, would it add another \$20,000? Mr. Gucciardo said it would depend on what hours of the day you wanted them to run. Mr. Hughes asked about the route at Lover's Key. He noted they go into the high rises. Do we get any contribution from the condo? Mr. Gucciardo said that Lover's Key gave us about \$5000 last year and the Grandview \$2500. We have been contacting them already. Mr. Hughes noted that there is no hold harmless clause in this one. This came up on Nov. 16 when he noted that it said we were holding the county harmless and he thought they should hold us harmless. Now it has been taken out. Mr. Roosa said this is only for an additional trolley. Mr. Hughes said he would hope we would try to add this clause to any of our interlocal agreements.

Motion: Mr. Hughes moved and Mr. Mulholland seconded that the agreement be accepted as submitted. The motion carried unanimously.

VIII. ADMINISTRATIVE AGENDA

A. RECOMMENDATIONS FROM THE CHARTER REVIEW COMMITTEE

1. Commencement of term at first meeting after the election

Motion: Mr. Mulholland moved and Ms. Cereceda seconded that this be approved. **Discussion:** Mr. Mulholland said the elections are in November and you have wait until after January to be seated. He thinks this would eliminate the lame duck effect. Mr. Hughes asked how it would interrelate with the reorganization of the council. Do you reorganize in January or November? Ms. Cereceda said it would

need to be when the new council is seated. Mr. Roosa said the charter says at the first regular meeting after the general election. Mr. Hughes noted that we did not do that this year. Mr. Roosa said the rationale for waiting until January is that the new council should elect the new mayor. Mr. Hughes said if there is no runoff, this would fix the inconsistency. **Action:** The motion carried unanimously.

2. Multiple candidates

Motion: Ms. Cereceda moved against the approval of this amendment. Mr. Hughes seconded the motion. **Discussion:** Ms. Cereceda said this would allow "elect a slate." Mr. Hughes agreed and he also echoed Dr. Croker's comments at the beginning of the meeting. In this last election, he was running to fill a two-year vacancy and the rest were for a three-year term. If this is accepted, people would have no choice on whether they are running for two or three years. Also if four people run for one seat and only one for another seat, then you have to do away with seat numbers. It is meaningless to run for seats if the highest vote-getters win. They would have to all run at large. Mr. Reynolds said he sees nothing wrong with the amendment except for the last sentence which has no place. He sees no value in having a runoff election. He would like to see the majority candidates win. **Motion to call the question:** Mr. Mulholland moved and Ms. Cereceda seconded that the question be called. The motion passed unanimously. **Action on the original motion:** The motion carried unanimously.

3. Town manager's contract (Termination benefits)

Motion: Mr. Mulholland moved and Ms. Cereceda seconded that this amendment be accepted. **Discussion:** Ms. Cereceda asked the difference between this and the present contract. It was clarified that it was only adding termination benefits. Mrs. Segal-George stated that she already has that. Mr. Hughes said he doesn't see the need for this and doesn't know why they felt the need to add it. Compensation means being paid something, and if you negotiate a contract that has a termination agreement, your termination benefits are compensation. Adding "and termination benefits" doesn't add anything to fix compensation. It is redundant. You shouldn't go through a charter amendment for this type of thing. **Action:** Mr. Mulholland voted in favor of the motion. All others voted against. The motion failed.

4. Initiative and Referendum (10% of voters have power to petition for an ordinance)

Motion: Mr. Mulholland moved against the amendment and Mr. Hughes seconded. **Discussion:** Mr. Mulholland said he felt that requiring only 10% is too low. We have 4865 voters, and 10% would be too low to force a referendum. Mr. Roosa explained that as the current law is written in Florida, they could amend the charter by a petition of 10% rather than 25%. If they couldn't amend by ordinance and they felt strongly enough about it, they could go for a charter amendment which would then go to referendum. Mr. Hughes said he would like to see the rest of the language in this section rewritten. There is no provision for an amendment to an ordinance, only repeal. **Action:** The motion carried unanimously.

Mr. Hughes said the charter review committee was charged with only these holdover items. Several people have asked about the runoff provision. He is opposed to the way the procedure is now. If there is going to be a runoff, and if you don't go to simple plurality and running at large, then he agrees with Dr. Croker that if there are more than two candidates, they should run on the October primary date and the final election should be on the general election day. Campaigning from July to December is too much, for the candidates and the townspeople too. Ms. Cereceda said she agreed. Mr. Roosa noted that the council can propose a charter amendment any time. Mr. Hughes said he would like a committee to look at the whole idea of multiple candidates again, but if you want to keep it simple and stick with the numbered seats, he would ask the attorney to draft an ordinance that provides for multiple candidates to run in a primary election, then the two highest run in the general election in November. It would save the town the cost of the runoff.

B. RESOLUTIONS FROM THE MARINE RESOURCES TASK FORCE

1. Ban on live shelling

Motion: Mr. Mulholland moved and Mr. Reynolds seconded that staff prepare a resolution to be forwarded to the State Marine Fisheries Commission encouraging them to hold public hearings on the Town's desire to ban live shelling. **Discussion:** Mr. Mulholland said the task force has studied this thoroughly and they feel it is easier to enforce a ban than to enforce a limit of two live shells. Mr. Reynolds asked if a tenant (such as a hermit crab) is considered a live shell. Mr. Mulholland asked Ilene Barnett to answer this question. Ms. Barnett said that a shell occupied by a hermit crab is

generally considered a live shell. You can put another shell near it and if the animal moves to the new shell, then you can take the original shell. Mr. Hughes said there is a great deal of confusion about the rule that allows two live shells. People may have five in their family so they pull out two sand dollars each and take 10 home. That is not good for the beach and he is favor of a total ban. Ms. Cereceda asked how this will be enforced. Mayor Murphy said that is not addressed here. The council is not banning live shells--they are supporting the resolution of the task force, and on approval it will be forwarded to the Marine Fisheries Commission and they will hold hearings, then they will have to face the enforcement issue. Mr. Mulholland said enforcement would be up to the town. Mrs. Segal-George said the hearings will be held in this area and we can have representatives from the MRTF and the council at the hearings. Ms. Cereceda said she wants to know that the council will support this monetarily before she votes for it even though she thinks it is a good idea. Mr. Mulholland said enforcement can be discussed at the ordinance stage. **Action:** The motion carried unanimously.

2. Move buoys from 500' to 1000' in the area near Little Estero Island

Motion: Mr. Mulholland moved to direct the town attorney to draft the necessary ordinance amendments as suggested in the resolution. Mr. Reynolds seconded the motion. **Discussion:** Mr. Reynolds asked if they discussed the whole coast. Mr. Mulholland said they only looked at that area because it is a wildlife refuge area and because it is a safety issue for the swimmers. **Action:** The motion carried unanimously. Mr. Hughes said it was suggested that the buoys be numbered in case they get displaced and he thinks that is a good idea.

3. Ban airboats from operating in the Back Bay

Motion: Mr. Mulholland moved to direct the Town Attorney to prepare an amendment to the vessel control ordinance to ban airboats in the back bay. Mr. Reynolds seconded the motion. **Discussion:** Mr. Mulholland said they have been provided with a lot of information from many sources that state that airboats create noise and can go in such shallow areas that they can destroy the sea grasses which destroys a food source. He feels this is the most important of the three recommendations. Ms. Cereceda said she is opposed to the council taking action to ban one particular type of vessel from the bay because if you asked all those agencies, would say that all vessels including jet skis should be banned and can cause damage. She asked if Mr. Goodbread has appeared before the task force and if there has been any effort to work with him and express their concerns. He should be offered the benefit of working with our concerns first because he has been operating a tour business back there. Mr. Mulholland said that has not been proven and he has not been seen back there as a regular tour business, and airboats are a clear danger to the habitat. Ms. Cereceda said there is a good possibility that they should not be back there, but she does not believe it has been investigated by bringing Mr. Goodbread to the table. Perhaps he only wants to operate like any other boater operates his boat. He would be banned just because of the particular kind of boat he operates. We allow boats, jet skis and high-powered boats that make even more noise. Mr. Mulholland said most of those boats cannot operate in much of the back bay. We can only stop them from the town's waters. We can't stop them from going in the back bay. The task force felt there was no benefit to talking with Mr. Goodbread. Ms. Cereceda said all voices should be heard. Always before, the first people we have brought to the table are the people we are trying to restrict (jet skis and parasails.) Mr. Mulholland said they have worked with the parasailers and jet skiers and have workable ordinances which came from the MRTF. Ms. Cereceda said she is asking them to do the same thing for this business. **Action:** All voted in favor of the motion except Ms. Cereceda. The motion carried.

Mr. Hughes asked if the MRTF is working toward any prohibition of personal watercraft in the back bay. Mr. Mulholland said they have worked with the vendors and have seen some results. He feels they have a good handle on the tour operators and they have worked to increase enforcement in the back bay. Mr. Hughes would like MRTF to make a recommendation regarding the use of personal watercraft in the back bay. They did it in Sanibel near Ding Darling. Mr. Mulholland said that is a wildlife refuge. Mrs. Segal-George said she can put in on the agenda for discussion.

IX. COUNCIL MEMBER ITEMS AND REPORTS

A JOHN MULHOLLAND

Mr. Mulholland said the town's birthday party was wonderful and he thanked the committee for their efforts. The New Years Eve celebration was a success and he thanked especially Ed Lawler who spent many extra hours on it. He said we need to start now in planning for next year's party.

He said that he has been informed that Stardial has stopped pumping into the back bay at Bay Beach. Their plan has not been approved yet by SFWM, but he thinks they have a good workable solution.

B DAN HUGHES

Mr. Hughes also thanked the organizers for the birthday party. He also understood that the New Years Eve party was successful.

He said he liked the consent agenda and he is in favor of continuing it.

He made public that Jack Heyman has filed a campaign complaint against him that has already been dismissed because the complaint was not timely nor notarized. The complaint was because he faxed a report from Chicago rather than filing it in person.

He said that Dan Parker talked about the beach accesses at a previous meeting. He asked if the staff is doing anything about that. Mr. Gucciardo said they have not been directed to do anything yet by the council. He noted that the county Parks and Rec is working on some upgrading of the accesses.

C ANITA CERECEDA

Ms. Cereceda said that New Years Eve was a tremendous success. Mr. Personet of Sprint gave \$2500 toward the event. She thanked him on behalf of the council. She agrees that we need to start thinking about next year. Last year was successful and this year was quadruple so. It verged on being too many people. The good thing is that we had no need of emergency vehicles or sheriff vehicles. There were no fights or incidents, which speaks well for the community. The other fabulous part is the wide range of age groups that were enjoying it. Mr. Lawler did a good job of getting it presentable before the next morning.

Said that she went before the county commissioners today about the gas tax. They talked about everything except their promise, which none of them remember. Commissioners Manning and Albion thought it would be a good idea to spend some of Sanibel's money, if they would give it up, to do some work on the Summerlin corridor, which was supposed to appease us. Their other idea was that if we would come up with a five year plan of what we wanted to do with it, they would be more willing to work with us. None of them discussed the reallocation of the gas tax. We are still on hold and will continue to argue with them. Mayor Murphy said he understands the position they are taking even though he doesn't agree with them. It is a political question. We should give them verifications and provide them with the minutes. We can show them what we plan to do with it in five years.

D GARR REYNOLDS

Mr. Reynolds said the holiday celebrations were wonderful. He enjoyed the decorations along Estero also and the lighting at Times Square. He thanked the volunteers who organized the birthday celebration and the ones who provided the cupcakes. He thanked Mary Winner for the music at the party. He wished everyone a happy new year and wished Mayor Murphy luck.

E RAY MURPHY

Mayor Murphy echoed the comments and thanked the people who worked on the celebrations. He agrees we need to start early next year, but he reminded them that there are only 72 days to St. Patricks Day and he intends to do the parade again. They are looking for bands now.

He agreed that the consent agenda was a good idea and will expedite the meetings. He feels that if someone just wants clarification, they should call the staff ahead of time and try to get it clarified before the meeting.

He reported that the Regional Council has elected him to be their representative to the state council of Regional Planning Councils. The state group meets quarterly. He will not be here for the Thursday workshop or the Friday charette because he needs to be at that meeting in Tallahassee.

X. TOWN MANAGER'S ITEMS

Mrs. Segal-George reminded the council that on Thursday there will be a joint workshop with the LPA at 6:30 . Mr. Spikowski and Mr. Dover have some interesting drawings for Old San Carlos and Crescent and also the area where the stoplight is. On Friday there is a planning session for Santos, and the businesses and residents have been notified in the area.

X1. TOWN ATTORNEY'S ITEMS

Mr. Roosa reported that David Cardwell, our special counsel on the CRA, has been admitted to the hospital in Colorado and he requested that Mr. Cardwell be remembered by the Council. On that lawsuit that he filed, no appeal has been filed, and the court has validated the \$500,000 loan between the town and the CRA.

The council has been provided with a letter from Ken Jones in response to their not accepting the settlement offer in the Primeau case. Now that the loan has been validated between the town and CRA, and now that the council is the CRA, one of the concerns of Mr. Jones is that he might need to join the town as a party defendant. Mr. Roosa recommended that the council authorized the town attorney to make an appearance on behalf of the CRA in the current litigation rather than leaving that with the county. Tom Wright would continue to defend the county. The advantage is that they will have the same representation as the council because they are the CRA, and there would be no possibility of a judgement against the town. Any judgement would only be against the county and the CRA.

Motion: Mr. Hughes moved that Mr. Roosa file a motion to substitute his appearance in lieu of Tom Wright. Mr. Reynolds seconded the motion. **Discussion:** Mr. Roosa said he has talked with Tom Wright and he has no problem with it. **Action:** The motion carried unanimously.

XII. PUBLIC COMMENT

A JOE CROKER

Dr. Croker said we witnessed the exchange of the gavel tonight, and now Mr. Murphy is the mayor. According to the charter, the mayor is a ceremonial position who cuts ribbons, kisses babies and goes to parades. But if he talks to his predecessor, he will find out it is much more encompassing than that. He has been to many meetings and he has watched a lady who was virtually a novice politically mature into an experienced diplomat who has given of her heart and soul for the roughest three years this town will ever experience. He said he speaks for many who appreciate what she has done for this town. He wished Mr. Murphy good luck.

B JOHN GRIFFEN

Mr. Griffen said he is opposed to the rezoning of the Mid-Island Marina property as commercial. He is against Publix at that spot. Do they think the lawsuits will stop if it is built? Mr. Hughes said it won't be built unless the lawsuits are completed. Mr. Griffen said the council has the ability to stop it. They rezoned the property to allow it. They can stop it and he requested that they do so. The lawsuits will not stop after it is built. He asked if there was a study being done with the federal environmental agencies on that zoning change. He believes that he is going to lose money on his investment, so he is impacted by the zoning.

Mr. Hughes asked Mr. Roosa about the status of the Publix case. Mr. Roosa said it went to arbitration and arbitration failed so it is set for trial. He thinks it is set for March.

Mr. Hughes asked about Sanbar. Mr. Roosa said there is nothing new. Mr. Reynolds reported that someone threw a firecracker on the tiki bar and burned it up.

Mr. Hughes asked if we got the title insurance on Gullwing. He wanted to follow up on that and see a copy when it comes in.

XIII. ADJOURNMENT

Motion: Mr. Hughes moved and Mr. Reynolds seconded that the meeting adjourn. The motion carried unanimously. The meeting adjourned at 6:40 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary