

**FORT MYERS BEACH
TOWN COUNCIL MEETING
FEBRUARY 1, 1999**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Ray Murphy opened the meeting on Monday, February 1, 1999 at 6:30 P.M. Present at the meeting were: Mayor Murphy; Vice-Mayor John Mulholland; Council Members Daniel Hughes, Garr Reynolds, and Anita Cereceda; 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 Deacon Scoop Kiesel of Church of the Ascension.

IV PUBLIC COMMENT ON AGENDA ITEMS

A HAROLD HUBER

Mr. Huber lives at the south end, but he is on a committee to try to organize an event at Bowditch Park. It is a shame to have such a lovely park and not have any parking. Individuals and groups cannot access the park.

B ED SCHMIDT

Mr. Schmidt lives on the north end. He is in opposition to additional parking at Bowditch. It was intended and approved to be a passive park. It will cause further traffic problems on their end of the island.

C JEANNE BRADLEY

Ms. Bradley lives on the north end. She is president of her condo association of 30 members, and they passed a resolution a year ago and again last Saturday. They want to go on record as being opposing to the parking because the park was planned to be reached by trolley, boat, bike and on foot. The arrival by boat has not been utilized much and she thinks this is an ideal opportunity to have off-site parking and then convey people to the park by water. It should be looked into. More traffic would be caused by this parking, and there will be a constant stream of traffic. The park should remain passive.

D ROBERT HALLER

Mr. Haller lives on the north end. He supports what Mr. Ryffel is going to request, which is a traffic study so the council can educate themselves on behalf of the town to see what would happen there if they put in further parking. Regarding what Mr. Huber said, the park has been used periodically by the park board. They bring in skateboard competitions, dance class on the beach, etc. They close down the parking lot and use that. The utilization of the park has substantially increased since it began.

E BRIAN LANDISI

Mr. Landisi, president of Island Shores Condo Association, said they are opposed to parking at Bowditch. When the swap with Diamondhead was talked about, there was a traffic study that said it would cause a bottleneck. The #1 concern of people on the island is traffic and this will cause more. He encouraged the council to reread the study or commit to a new traffic study before going forward.

F CEIL SPUHLER

Ms. Spuhler thanked the council for considering the resolution to designate the area around Little Estero Island as an area of special concern. On Saturday she watched jetskiers zigzag from shore and out and back again to see if they could make a splash onto the shore, scaring people. She urged passage of the resolution.

G ED CUSICK

Mr. Cusick, owner of Snug Harbor Restaurant, spoke about the sign ordinance. He found out that input on the sign ordinance was asked for before, but he was unaware of it. This issue radically affects business owners. The ordinance ignores the people who have the most to lose. Signs will be small and hard to read and will cause trouble for visitors who need to know where things are. When signs can't

be read until you are on top of them, people miss their destination and must turn around causing further traffic problems. For those whose businesses are off the beaten path, they must be creative about letting people know who they are. He asked for a workshop with the people affected. He knows the council is open minded and fair, and he hopes they will accommodate them with this request. They would like to help form an ordinance that will be good for everyone.

H RAY WOLFE

Mr. Wolf said that Windward Passage (with 1300 owners) is in opposition to the parking at Bowditch.

I JOHN GRIESELING

Mr. Grieselding agreed with the objectors on parking. Things have changed since this issue was talked about before. There are trucks parked on Estero loading and unloading. Also the gambling boats are causing a lot more traffic on Estero. The council talked about the possibility that parking may be eliminated at Lynn Hall and put into a parking garage because they said that parking doesn't belong on the beach. Bowditch is on the beach. Also he attended an LPA meeting where one of the LPA members, talking about moving 7 units from Abaco Beach to Casa Playa, said they thought there were enough problems with parking up at that end where Abaco is, and that is why they voted to move it to Casa Playa. He is opposed to parking at Bowditch.

J JIM YAEGER

Mr. Yaeger, Lee County Attorney, said he is here at the request of the BOCC based on the presentation made by the town's mayor at the commission meeting last week. They are here to answer any questions they have. Commissioner Judah has sent a letter to the town making certain assurances. Due to time constraints, the board decided to proceed on a phased acquisition. They approved the purchase conceptually, but the public hearing on the issue of rates is set for Feb. 9. They would like to meet with the town to discuss those issues. If the council is not comfortable by the 9th, the hearing can be continued until the end of the month or the first of March. Until the commission issues bonds to acquire the utility, the county is not irrevocably tied to the acquisition.

K DAVID OWEN

Mr. Owen, Assistant County Attorney, said the council's voices have been heard loud and clear. They have been instructed to work with the council and staff and any consultants hired by the town while they are proceeding. They will be glad to answer any questions.

L AL VAN HORN

Mr. Van Horn spoke on the proposal to purchase FCW by Lee County. He attended a meeting at the chamber on this subject. It was attended by Larry Johnson. He commended Mayor Murphy and Mrs. Segal-George for their role at the meeting of the commissioners last week. Although it was not successful, he believes there is sufficient time to probe further the impact of the purchase. He understands the town is considering retaining outside expertise to study the rate structure and its possible impact, and he encouraged that move.

V PRESENTATION AND CONSIDERATION OF PSTF RESOLUTION 99-1

Flip Harby, chairman of the Public Safety Task Force, read the resolution recommending the purchase of two portable defibrillators to be placed in the sheriff's office vehicles. He said they are a failsafe system that won't allow the unit to be used if it is not needed. Fire Chief Steve Marcus said they recently received a donation from Mrs. Rash for defibrillators. Since they already carry defibrillators on their units, they suggested that the money go to put them in the sheriff's cars. He presented a check for \$3000 for one defibrillator.

Ms. Cereceda asked if the sheriff has been contacted about these units being put in the cars. Tom Myers said he has contacted them and they are in favor of it. She asked the cost of the training. Mr. Marcus said they would do the training in-house and there would be no charge except for certification. She asked about liability in case it was used incorrectly. Mr. Hughes and Mr. Roosa said the sheriff would be protected by the Good Samaritan Law. Mr. Mulholland said that he feels if it saves one life, it is well worth it. Mr. Murphy thanked Mrs. Rash for the generous donation. He asked how many units the council needs to buy. Mr. Harby said the resolution was drawn up before the donation. They would like the council to consider buying two units. There are normally two cars on the beach 24 hours per day and they will make every effort to keep those two units on the beach at all times. Mr. Gucciardo confirmed that funds are available in the budget.

Motion: Mr. Mulholland moved that items 4 and 5 of the PSTF resolution be accepted by the council. Mr. Reynolds seconded the motion. **Discussion:** Mr. Harby said in case of a special event, the extra unit could be at that location. Mrs. Segal-George said we have no procedure for using defibrillators at special events and no one is trained. Since one has been donated, it appears we only need to purchase one more from town funds. If later they decide they need a third, they can buy it then. Mayor Cereceda agreed. Mr. Mulholland agreed to change the motion to purchase one unit (in addition to the donated unit) and Mr. Reynolds agreed to the change. **Action:** The motion carried unanimously.

VI. PRESENTATION BY CARLETON RYFFEL ON BOWDITCH PARKING

Mr. Ryffel said that in the past traffic circulation has been talked about in a piecemeal approach. Time should be taken to look at synergistic solutions. VOICE has had a positive effect in moving traffic. Most of the problem is people looking for parking, not just traffic moving through. As part of the zoning approval, Pink Porpoise offered a spot that would offer about 30 spaces. He also suggested we buy or lease the Kentucky Fried lot. That would allow building a parking garage, and perhaps a ramp directly to the garage. A barricaded walkway over the side of the bridge would allow another lane on the bridge, which could possibly be alternated. To allow even one parking space at Bowditch would increase the traffic problem. Motorists who do not find a parking space will circulate and make the traffic worse. People searching for parking, will cause a worse traffic backup on the bridge. It was promised that Bowditch would be a passive park without parking. That is now the national trend, even in some of our national parks. DOT did a study that said it would have a bad effect. A sign that says parking is full, will not stop people from driving down there and hoping to find one. Let's not find out parking is a mistake after it is installed and too late to remove it. He requested that the town inform the county that they will not allow parking to be permitted without a traffic impact study. It should be performed by an engineering firm with no ties to the county. It would be paid for by the town. If the study shows parking is reasonable, it can be approved. Make an informed decision rather than letting it be decided by off-island people. Ms. Cereceda asked if he knew how much the study would cost. Mr. Ryffel said it depends on how far down the island you want to take it. It could be \$10-15,000. Mr. Hughes asked if we could ask the county to pay for this study. Mrs. Segal-George said the council has already told the county they could proceed and she does not know where they stand with that project now. Ms. Cereceda said that this came before the council in our first year, but we have done a lot of work on looking at what the town will look like since then. She suggested that we set it on an agenda to revisit and see if we still want to move in the direction of parking at Bowditch. There may or may not have been a change of heart since that vote. Mrs. Segal-George suggested putting it on the agenda for March 1. We will ask Mr. Lavender from the county to attend. Mr. Reynolds said the county has approved this twice and the council has approved it. He can understand the arguments of the people on the north end and he thinks he would feel the same if he lived on the north end and would want it as a private park in his backyard. He visited Bowditch three times, and each time he drove around the circle and left. It is a useless piece of land. People are not going to carry their chairs and cooler on the trolleys. He knows there will be more traffic, but he does not think it will be nearly as bad as the traffic that the people on the south end suffer now. Mr. Murphy said he understands that the people on the north end are waiting for permits to be pulled, and then they will file suit. Maybe we can save some time and money by discussing this. Mayor Cereceda clarified that this is an opportunity to affirm or revisit their decision. It does not mean they have changed their mind. Mr. Mulholland said there are new members on the council now and they might want input on the subject.

VII. PRESENTATION BY JORGE WIEBE ON PARKING OPTIONS FOR SEAFARER'S MALL

Mr. Wiebe, owner of Seafarer's Village Mall, said that parking is the major issue on this island. He has a parking problem and wants to solve it for himself and also all the people in the Times Square area. When he was in Europe over Christmas, he talked to some people and he brought a model to see if the council would like to have this garage in the town. It would park 250 cars, is almost invisible from the street, will be below the 35' height limit, and would solve the parking problems for the near future. He would like their input, not their approval at this time. The garage would be sitting partially on his property and partially on Helmerick property and he thinks he is making some headway toward an agreement with them. If you do not require the roof, you could add two floors later. It does not make sense financially, but he needs it in order to do some other things at Seafarers. The fire marshal has said that it can be done from his point of view. Mr. Murphy said he has always thought that it would take someone from the private

sector to build such a garage. Mrs. Segal-George said Mr. Dover is coming back on Feb. 25. Mr. Murphy said he would like to get their input on it. Perhaps down the road it would become financially feasible. Mr. Mulholland asked if it would be private financing. Mr. Wiebe suggested private financing so the town would not have to be involved. Ms. Cereceda asked if there would be anything standing in his way in the way of permitting. Mrs. Segal-George said parking garages are allowed in the overlay district. There may be some deviances or variances needed and it may require a CPD, which would require council approval. If the council likes, she can help Mr. Wiebe get through this as expeditiously as possible. Ms. Cereceda said it is very close to some of the renderings from our planners, and only one side would be exposed and the rest covered by businesses. She would like to direct the staff to help Mr. Wiebe administratively. It will help solve a lot of problems. It is an a good location, does not exceed height regulations, and is not publicly funded. Mr. Reynolds said he would hate to base everything on a model. He does not fully understand how it would fit on the property. He thinks it is a little premature to give staff that direction, although he does not want to do anything to discourage Mr. Wiebe either. Mr. Hughes said the proposal may alleviate one of the major problems we have and he feels that that is what our staff is here for, to help people with a viable proposal. We are not approving this at this time. Mr. Murphy said there has to be a way to solve our problem and we should encourage people with vision.

Motion: Ms. Cereceda moved that the council endorse the conceptual parking garage as presented. Mr. Hughes seconded the motion. **Discussion:** Mr. Reynolds said this has not been advertised publicly and the rest of the business community does not know about this. He was just hoping to discuss it later. He does not like impromptu decisions. **Action on the motion:** The motion carried unanimously.

VIII. CONSENT AGENDA

Motion: Mr. Mulholland moved and Mr. Hughes seconded that the consent agenda be approved. The motion carried unanimously. The following items were approved:

1. Approval of Minutes: January 4 and January 7, 1999
2. Resolution supporting the Florida League of Cities legislative agenda

The council took a break at 7:55 and reconvened at 8:12 PM. Mayor Murphy announced that the council would be discussing item XIIC at this time rather than later in the meeting.

XII TOWN MANAGERS ITEMS

C UPDATE ON PURCHASE OF FLORIDA CITIES WATER BY LEE COUNTY

Mrs. Segal-George said that last week the council directed the mayor to go the county commission meeting and also to retain a lawyer. She has hired Tom McLennon and he is here tonight. She spoke about the letter from Burton and Associates. They are proposing to do a rate analysis for a price not to exceed \$9500. (He cannot complete this analysis by February 9 so we would not be ready until the end of February or the first of March for the public hearing.) We have been getting a lot of information from the county and there appears to be discrepancies and fluctuations. She believes we need an independent analysis. She asked for authorization. In addition she has asked Mr. McLennon to prepare a lawsuit to force the county to ask the town council for permission before proceeding. The county does not agree with that position. She has also been talking with others who may be affected. When the vote came about to form the charter county, there was a lot of discussion that it would not affect the way they relate to the cities. But now we have a statute that seems to say that they have to ask our approval, and the county is saying that under home rule they do not. There is a possibility that another city may join the suit and possibly the League of Cities. Her recommendation is to retain Mr. Burton and to allow Mr. McLennon to proceed with filing the lawsuit. Mr. Reynolds wanted to hear from the county to see if we could achieve what we want without going to a lawsuit. Mayor Murphy said that the county commissioners already voted last week and did not do what we asked. We made the case that we had not had enough time to study and review the ramifications of this purchase. We asked for an extension before the vote for purchase. The commissioners seemed surprised that the town was not consulted in this matter. The vote was to go ahead with the purchase. Reassurances were made that the purchase could be held up at the rate hearings but they felt that they needed to move forward because of the time frame with the seller who was entertaining other offers.

J. W. French, Public Works Director, said that the commission has asked them to work with the town. They are developing a more detailed analysis, particularly for the commercial, condo and RV rates. He thinks the staff recommendation to hire an independent rate consultant is a good one and they will work

with them. Avatar has agreed to make sure all the information is made available to our consultant. What happened last Tuesday was just one of a number of steps that need to be taken before this is final. They feel that there may be a few rates that are raised, but they feel that most are going to be a wash or will go down. Mrs. Segal-George quoted a rate sheet that came from Lee County Utilities for a condo on the beach with 290 units that showed that some months there will be a 100% increase. We have a small staff and we do not have an expert in utilities, but she does not understand how that agrees with what Mr. French is saying.

Larry Johnson of Lee County Utilities said they have been providing information and meeting with the town staff for two weeks. They indicated a week ago that on multi family (particularly condominium) they were expecting approximately \$2 per unit per month increase. They are working with Avatar and having them do an analysis on an account by account basis. They are sharing that as it becomes available. The fax shows they took three condos, two had increases averaging \$1 and one \$1.50 and the other was \$3 per unit per month increase.

Mr. Owen said that in mid- to late-summer of 1998 a group of individuals got together to look at the acquisition of FCW. They discussed with other counties the possibility of putting together a government authority to make the purchase. In late fall, they agreed to proceed and met with Avatar in December. The representatives of the government authority working group agreed to terms and conditions. They then had a charge from Avatar that it had to be closed, including bonds sold and money available, by March 31, 1999. This is a difficult task. The sums involved are very large. Sometimes an opportunity is presented to do something that appears to have a benefit to the community. The board has taken no final action, but they had to show a good faith effort in concert with the other counties that are involved. Three of the other counties also took action last Tuesday, and three more will tomorrow. Avatar required this good faith effort to find a public purpose which is required under Florida statutes. Without that finding there is no proceeding. They found a public purpose and benefit. It was a necessary finding to continue with the process. The GUA has 60 days to be constructed and issue bonds and close the deal. The commissioners agreed to participate in the GUA, and they may withdraw upon vote of the board. They authorized staff to continue with the process and to cooperate with the town. The initial hearing will be on February 9 at 5:05 PM. That public hearing can be continued for further discussion. The mayor asked for 30-45 days. The board can accommodate the 30 days but they must continue to work to keep the possibility alive. Mr. Hughes asked for clarification if there are 7 water systems involved and if they are mutually contingent. Mr. Owen said it is set up to acquire all the systems and it is an all or nothing sale. Some of the counties are small and want to continue with the GUA. Lee County would like to buy our portion and then depart from the GUA and operate their portion independently. Mr. Hughes asked if the other counties have incorporated municipalities that they must consult. Mr. Rowan said there is one other county that has a similar situation, but he does not know if they have raised any questions. Mr. Hughes said it is clear in chapter 153.03 that the council has authority, but the county is saying it is not applicable in a home rule county. Mr. Owen said that part 1 of chapter 153 is an elective financing statute for acquiring systems and issuing bonds. In 153.20 it says that this chapter shall be deemed an alternative method and shall be regarded as supplemental to the power of the commission by other laws and shall not be a derogation of any powers now existing. He said the issue is a choice the county may make for the financing of its bonds. The county has elected to do this under Chapter 125. They have not done 153 financing for many years. Mr. Mulholland said he gets the impression they will continue to work with the town, but what happens if the town doesn't agree? Mr. Owen said that would be up to the commissioners. Mr. Mulholland said that we have a problem with the wastewater system, and there have been at least three spills. Is that part of the deal? Mr. Owen said no. The town is served by two systems and the only aspect of Avatar is the water system. Mr. Reynolds asked why it is necessary to adjust rates instead of letting it lay until the purchase is complete. Is it a bad investment? Mr. Owen said they are shifting from the private rate structure to the county structure and that requires some changes. They know some will go up but the question is who and how much. Ms. Cereceda said she doesn't appreciate the lack of consideration shown to the town. She has to answer to the business and residential community and they are up in arms. The commission needs to be discussing with the town some sort of compromise or she is prepared to make a motion that we initiate a suit so we can receive the consideration that we should have been given from the beginning. Mr. Murphy said that he has said that he does not want to be a deal breaker, but he understands the frustration and he is hearing it from a lot of people. The town feels they were circumvented. Mr. Owen said they did not know they were going to have a deal until December 18. In late August he had some discussions with the Town Attorney, but no discussion came from the town at that point. Ms. Cereceda asked if it was the county attorney's position that they do not need the town's approval. Mr. Owen said it is

his opinion that when they are not following that statute for financing, they do not. Mr. Yaeger said there should have been some communication to the council, and the board heard that, and that is why they are here.

Mr. McLennon said there is an argument about the interpretations. He believes if the town files for declaratory relief, they would get before the judge and it would not be a frivolous suit. There are other cities in Lee County where this issue may arise, and those cities are considering joining in because the issue may affect them at another date. A factor that needs to be factored in when finding the public interest is they have to determine the negative as well as positive impact on customers. If they are just now providing us with information, maybe that has not been completely met. He recommends they hire Burton and Associates to do an analysis, but that they take no further action at this time. Another issue is that there are seven counties who are trying to purchase this utility. Other counties have indicated in newspaper articles that their rates are going to go down. The town may want to consider whether Fort Myers Beach is getting the full benefit of what is being purchased. Mrs. Segal-George said there would be an additional fee for Burton to analyze the government deal. Mr. Hughes asked at what point would it be essential to commence litigation. Mr. McLennon said that once the bond is approved, the deal is pretty well committed and it would be difficult to stop. The rate hearing would be a time to decide, if the town has not been given an opportunity to get all the information and the commission sets a rate. Ms. Cereceda asked if he felt that the county needs our consent. He said yes, but there is not a lot of case law on this so he cannot point to a case that is directly on point. He cannot say how the court will rule. He does not see that requiring the consent of the town is in derogation of the law. Ms. Cereceda asked what the affect of our hiring him will have on the issuance of bonds. Mr. McLennon said it could affect it—they would probably want a resolution to the question. Ms. Cereceda asked the council what satisfaction would be. If the county could guarantee that rates would stay the same, would we say OK? Would we say OK if it would raise 3%? 5%? 10%? She feels they need to take a step. She suggested retaining Mr. McLennon and initiating the suit and retaining Burton and Associates. It puts the county on notice that we are in, and at some point the commission is going to have to strike a deal with the town. Mr. Mulholland said it is clear from Mr. McLennon and the county that we have to know about the rates to see if the town is getting a good deal. Mr. Hughes said we have retained Mr. McLennon to give us advice, and he is recommending the only action we take tonight is to go ahead with the Burton study and reserve a decision on the lawsuit. Mrs. Segal-George said there are two tracks. Mr. Burton is going to analyze the rates. The other issue is if the council must give consent, and if so, the council can ask certain things of the county to get their agreement. We could ask to freeze the rates for 5 years, we could ask for the right to help set rates in the future, we could require that the sewer plant be part of the discussion. That is not being addressed and the only way it can be addressed is to file a lawsuit and get to the table. If it will jeopardize the deal, they may deal with us. Mr. Murphy said it is on the table now and he is sure Mr. Yaeger will take that back to the county tomorrow. He is not for shooting guns off prematurely. We have the ability to interfere, but we don't have to do that this evening. Mr. Reynolds asked if they would consider not raising the rates, but freezing the rates. Could they still buy the utility? Mr. Owen said they have uniform rates and when this is folded into the other system, they must be uniform. They are not subject to the Public Utilities Commission.

Motion: Mr. Mulholland moved that Burton and Associates be hired for the rate study. **Discussion.**

Mr. Reynolds said he doesn't see the sense in spending money to see if the rates have changed. We already know they have. Mr. Hughes asked about the overall picture of the acquisition. Mrs. Segal-George said Mr. Burton estimated it would cost \$10,000 to analyze the deal to see if some counties are getting a better deal. Mr. Murphy asked if it would be better to spend \$9500 to analyze rates or \$10,000 to analyze the deal. Mr. Mulholland withdrew his motion.

Ms. Cereceda said if it is a good deal for the county it may not be good for the town. The town needs to be at the table for the deal making procedure. Mr. Mulholland asked which study would be most beneficial for the town. Mrs. Segal-George said she feels they are both important, but the question is how much does the town want to spend. Her recommendation was to do the rate analysis but at the same time to let Mr. McLennon file suit because then we start getting to the economics of the deal. It is unfair that the town has to bear so much financial burden just to find out what is fair. The county has a large staff and we do not. Mr. Hughes asked the county if they have done a study to see if the acquisition price was a fair. Mr. French said there were evaluations done. The price is \$135.8 million. From the revenue string the valuation was \$143 million, from original cost less depreciation it was about \$151 million, and he doesn't remember what the going concern was but it was in excess of the negotiated purchase price. The rate analysis question is the problem of total revenue generated. It may be the same between FCW rates and the

county rates, but you get in trouble on the individual accounts. When you change from one structure, there will be variations. Some will come off better, and some come off worse. The town should ask the rate consultant what is the total dollars if you apply the county rate and the FCW rate. Also how does it affect different classes of customers. You will hear from your constituents if they come off worse, but you will never hear from the ones who come off better.

Motion: Mr. Hughes moved that we retain Burton and Assoc. for a rate study not to exceed \$9500, and if the study is not concluded by Feb 9, that the council appear before the commission and request that the County's rate hearing be continued until we have received the conclusion of the rate analysis. Mr. Murphy seconded the motion. **Discussion:** Mr. McLennon said we need to get the rate analysis. He still does not know if that is good or bad for the town, but it will give us the tool that we need for a decision. Mr. Hughes said we need the rate analysis no matter what we do, but we can continue to have discussions in the meantime. Mr. Murphy said it is not to the county's best interests to have litigation, so why not try to negotiate these deal points outside of a lawsuit. Ms. Cereceda said she thinks there are three issues: the rate study, the logistics of the deal, and what does the town get. She thinks we are in a beautiful situation of being able to stop their deal. We may even be able to negotiate for our gas tax. But just the threat of litigation has not hindered them yet. Mr. McLennon said the cost of filing the litigation would cost \$5-6000 to get the suit prepared and filed. He said he does a lot of trial work and they don't usually recommend filing a suit unless it is absolutely necessary. The county recognizes the concern and they will have to deal. If we don't have the rate analysis, it will jeopardize the lawsuit. He thinks we still have time if it looks like the county is still on the track to buy anyway or if they decline the rate hearing continuance. Mr. Reynolds said he believes the county is dealing under chapter 125 and he thinks that will probably stand. Mr. Johnson has given us the rates and it is a matter of reading them. It is already confirmed that the rates will change, and they will probably stay about the same overall. The council is wounded because they weren't consulted earlier. He does not think the suit will help. He would rather negotiate with the county. **Action:** All voted in favor except Mr. Reynolds. The motion carried.

Motion: Ms. Cereceda moved that we file suit against the county on the basis that the consent of the town must be had. Mr. Hughes seconded for purpose of discussion: **Discussion:** Mr. Mulholland asked if it would be filed now or after Feb. 9. Ms. Cereceda said now because there is every indication is they are going forward. **Action:** Ms. Cereceda voted for the motion. All others were opposed. The motion failed.

Mr. Hughes said it should be clear to the county that even through we didn't vote to commence litigation at this time, but we are prepared to if we are not satisfied with the rate discussion and discussion with the staff in terms of the other items that have been brought up. He asked the county to meet with Mrs. Segal-George to discuss these items.

IX. ADMINISTRATIVE AGENDA

A. PUBLIC HEARING: ORDINANCE AMENDING THE VESSEL CONTROL AND WATER SAFETY ORDINANCE (PROHIBITING AIR BOATS IN THE BACK BAY)

Mr. Murphy read the titles. Mr. Mulholland said the MRTF unanimously agreed on this. He is not against airboats, but he is against them when they go in and destroy Estero Bay. It has been shown that they cause severe detrimental effects and have been banned in many other areas. He is trying to preserve the quality of life of residents, wildlife and the businesses that promote eco-tourism.

The public hearing was opened.

1. STEVE GOODBREAD

Mr. Goodbread said that he and his wife own Pelican Tours and have operated it for three years. Airboat tours have been requested by our tourists. Airboats are not detrimental to the environment. People are bad for the environment. Propeller boats and 2-cycle engines do a lot more damage. They suck up water and then put it back including gas. Propellers damage sea grasses and manatees. The hull of an airboat is flat and the only pollution is noise. When he turns his key off, the pollution goes away. He regulated himself. He doesn't go out before 9 AM or after 7 PM. Cigarette boats are much louder. His is a wide boat and has more flotation. Sea grass must have water on it and he can't damage it. You can damage sawgrass if you run over it dry. He is a licensed captain. He lives here, and has other businesses here. He owns property here and is a Florida native. He is not here to ruin the environment. He makes all

his income from tourists. He would not chase the birds away. If airplanes do not scare the birds away at the airport, he is not going to. There is no oil or gas that goes into the water. He regulates himself on the places where he goes. He does not come into FMB boundaries. Where he runs there is no sea grass for him to harm. They go up to osprey nests and blue herons and they do not go away. He does not pick up passengers from the beach. Mr. Murphy asked if he is the only operator on the island. He said yes. Mr. Hughes asked if he presented his views before the MRTF. Mr. Goodbread said he did not know it was coming about. Mr. Hughes said if he is not operating in our waters then this ordinance would not affect him. Mr. Goodbread said he cannot take his boat fishing or to his house or to a restaurant if this ordinance passes. He can idle quieter than half the boats out there. He does not take tours commercially in our waters. He operates from Gulf Star Marina on San Carlos Island. Mr. Mulholland said the town's waters go up to any existing dock on San Carlos Bay. Mr. Goodbread said he idles through a no wake zone. It was established that there is a small part of San Carlos Island where he must go through town waters to reach the back bay for his tour. Mr. Murphy asked if the tours are wildlife tours. Mr. Goodbread said they go into the back bay where there is bird wildlife. They have binoculars. They show crab traps. He gives them information on the mangroves. It would ruin his business if he scared away the birds. His clients bring cameras. Mr. Murphy said maybe the ordinance should be restrictive on the operation as opposed to prohibitive. It sounds like Mr. Goodbread is conscientious in his operation. Mr. Goodbread said he would like to be included in the discussion if they decide to draft a broader ordinance.

2. BRUCE MACFARLAND

Mr. McFarland said he owns two airboats for pleasure only. He doesn't usually operate in the back bay. He usually goes to the Everglades. But if the ordinance passes, he would not be able to keep his boats in his canal. He quoted a study from the National Audubon Society that said that airboats do not chase away birds. Outboards do much more damage. His boat weighs 1100 pounds, which is about 25 pounds per square foot. If a man his size walked through the same water it would be 240 pounds per square foot.

3. CHARLES JARVIS

Mr. Jarvis said he drives a tour bus to the Everglades for people to ride airboats. People love them. They do no damage to the environment. Mr. Goodbread runs 8 props, which is much quieter than most. They do not chase off birds. If the birds do fly off, they come right back. They run their tours in a national forest with Coast Guard approval. Mr. Goodbread knows his business well. His boats do not put out the pollution of 2-cycle engines.

4. DON HARWELL

Mr. Harwell said Mr. Goodbread is environmentally sensitive. He has been on the tours, and he does not disturb any wildlife. He has idled up to an eagles nest almost directly under the nest without disturbing them. He has a Teflon coating on his boat so that vegetation does not hang up on it. He does a good trip and people enjoy it very much. He would not do anything to harm the environment.

The public hearing was closed. Mr. Hughes said he is impressed by the comments that were made in opposition. But it is conceivable that we can modify the ordinance and restrict commercial tours in the back bay without prohibiting personal use at idle speed. Then we would accomplish what the MRTF wants, which is to address the concern about commercial operations and the proliferation of commercial operation. This tour does not encroach on our waters except in one small area, if we could get around that. Ms. Cereceda said when we were dealing with the question of floating vendors, we grandfathered the one operator but banned all others. Mr. Goodbread is willing to cooperate with the town. Mr. Hughes said another way would be to accept boats traversing at idle speed in channels only to get beyond the territorial waters of the town. Ms. Cereceda said one concern is the proliferation. The town is trying to gear more toward kayak tours. Grandfathering would eliminate the proliferation. If we are concerned about the back bay, can we have an ordinance that would get other agencies to support our preservation efforts in the whole back bay? Mr. Mulholland said they intend to do that but there is a lot of work to do. They have a plan to manage the back bay and the beach, but the back bay is part of the Aquatic Preserve and is controlled by the county. We would like to have stewardship and be involved in all decisions on the back bay. But we are not there yet. Mr. Reynolds said he has the same concerns that they will proliferate. If we want to make some consideration to Mr. Goodbread to operate in the peripheral of the town waters, that might work. If the airboats are so quiet and non-disturbing, why are they being banned in so many parks? He would like to see them banned except for some provision for Mr. Goodbread. Mr. Hughes said we have gone to a lot of trouble to restrict something that doesn't really exist. What is there now does not pose a

threat to our waters. If there is occasional use of an airboat at idle speed only, it is not a threat to our environment. It does not seem to be a problem of great magnitude. Mr. Reynolds said there has been a study for some time by the MRTF, and we should consider taking their recommendation. Mr. Roosa said we could state that “no owner/operator of any commercial power vessel launched from a town port and propelled by the use of fans is to operate at other than idle speed”. Mr. Hughes said he wanted the personal use to be at idle speed also. Mrs. Segal-George asked what the definition of a port is.

Motion: Ms. Cereceda moved to continue this ordinance until the next meeting. Mr. Hughes seconded the motion. **Action:** Ms. Cereceda, Mr. Hughes and Mayor Murphy voted in favor of the motion. Mr. Reynolds and Mr. Mulholland were opposed. The motion carried. It will be continued until February 22. Mr. Hughes said he would like the attorney to come back with a revision to allow personal use only in back bay at idle speed, and commercially only in route from their place of business to get through our territorial waters.

B. PUBLIC HEARING: SIGN ORDINANCE

Mayor Murphy read the titles. The public hearing was opened.

1. FRAN MYERS

Mrs. Myers said she knows they have been working on this a long time and she has been watching it, but she trusted the judgment of the LPA and she knows the council would not do anything intentionally to hurt the business community. She does have a concern on non-conforming signs. She is concerned about the 8 years. The Red Coconut sign dates back to the 1940's. It is not offensive and is a landmark. If a hurricane takes it down, she can't replace it. After eight years she has to take it down and replace it with a lower one. That is her only concern.

2. RONN JAMES

Mr. James owns a small restaurant. He does not think the large signs enhance, but he doesn't want to see an historic sign like something at The Beacon Motel have to go away. It is a landmark. He showed pictures of Estero in front of his restaurant. You don't see a large amount of sign clutter. He has just added a sign that would identify them for emergency purposes. He is going for New Orleans motif. He wants to see something that enhances. If you use all pedestal signs, it will look like a wall going down Estero. Something on a pole is not as offensive as a wall. It may make sense on Sanibel where things are more spread out, but here the properties are small and close together.

3. TOM MYERS

Mr. Myers asked for a delay on this. Perhaps the business community did not take this as seriously as they should, but they can give some input.

4. BILL WHITAKER

Mr. Whitaker finds it hard to swallow that those who have put up legal signs and acted in good faith, suddenly find that their signs are illegal and they have to start all over. He has a tenant who has invested \$18,000 in a sign recently. His sign would be declared illegal. Give it a little more thought.

Public comment was closed.

Ms. Cereceda said she would like to propose a policy that things should come to the council as a draft ordinance, then the council should decide if that ordinance should be put to a public workshop if it is restricting a particular group. The third step should be the workshop if it is warranted, then first reading, then public hearing. She agrees with 90% of this ordinance, but for the benefit of the business community, we should have a workshop to better acquaint them and see if there are any concessions we can make without tying our hands. Mr. Reynolds said he received a discouraging call because they said they didn't know anything about this ordinance. He told them it has been advertised publicly and worked on for about two years. The caller said they should all have been called. We've never done that before. You can't please everyone even if you rewrite it 10 times. It doesn't behoove us to keep changing things when it has been worked on so long. Mr. Mulholland agreed with Mr. Reynolds because he was part of the LPA when they worked on it. However he has received calls about the amount of money people have spent on their signs. He thinks a workshop would be in order. Mrs. Segal-George said she copied the council on a way to structure the phasing-out based on the cost of signs.

Motion: Ms. Cereceda moved to continue the hearing until a workshop has been held and completed. Mr. Hughes seconded the motion. Mrs. Segal-George recommended March 18. She said there are a number of people who are trying to get large signs now and she does not have the tools to prevent that. Mr. Roosa said that while going through the process of adopting land use, we are going to be presented

with several large and difficult amendments. Any ordinance can be changed, and many times you don't recognize the impact until it is adopted and enforced and problems arise. He thinks the workshop could be for modifications to the ordinance. In the meantime you would have a structure to work from. He thinks it needs to be amended and it needs to be a continuing process. He suggests adoption as is, then setting the workshop to set in motion the first amendments. That will give the town manager the tool she needs. The ordinance we have now is not what the people want on our island. Mayor Murphy said he is not thrilled about the last minute calls. This has been going on for a long time. **Action:** Ms. Cereceda and Mayor Murphy voted for the motion. Mr. Reynolds, Mr. Mulholland and Mr. Hughes were opposed. The motion failed.

Motion: Mr. Mulholland moved the adoption of the ordinance. Mr. Reynolds seconded the motion. **Action:** Mr. Mulholland, aye; Mr. Hughes aye; Mr. Reynolds, aye; Ms. Cereceda, no; Mayor Murphy, no. The motion carried.

Motion: Mr. Hughes moved that the sign ordinance be set for a workshop at 6:30 PM on March 18 and that it be publicized as well as possible. Ms. Cereceda seconded the motion. The motion carried unanimously.

C. PUBLIC HEARING: RESOLUTION DESIGNATING THE AREA 1000' SEAWARD OF LITTLE ESTERO ISLAND AREA AS AN AREA OF PROHIBITED WATER ACTIVITY

Mr. Mulholland proposed a change to the resolution. Under section 1, line 3 he suggested it be changed it to say "as an idle speed zone". It would not be a total prohibition. The title would have to be changed also.

The public hearing was opened.

1. BILL PERRY

Mr. Perry said he is a MRTF member. It was not their intention to make it a prohibited area. Just the tidal pools are a prohibited area. They just wanted a 1000' buffer to protect the waders and the nesting plovers. They ask that buoys be moved out to 1000' and be placed every 500' apart.

The public hearing was closed.

Motion: Mr. Mulholland moved the resolution as amended. Mr. Murphy seconded the motion. The motion carried unanimously.

D. FIRST READING: ORDINANCE AMENDING THE PARASAILING ORDINANCE

Mr. Murphy read the titles. It was set for public hearing on February 22.

E. RESOLUTION RECONCILING LINE ITEM EXPENDITURES FOR THE FISCAL 1998 BUDGET

Motion: Mr. Mulholland moved and Mr. Hughes seconded that the resolution be adopted. The motion passed unanimously.

X. COUNCIL MEMBER ITEMS AND REPORTS

A. JOHN MULHOLLAND

Mr. Mulholland thanked Mr. Gucciardo for his letter to Dr. Albert about courtesy busing. He reported that he attended the policy meeting of Charlotte Harbor National Estuary. At that meeting they approved a grant of about \$7000 that Terry Cain worked on.

He asked Mr. Roosa about his letter to Mr. Yaeger asking that funds be disbursed to the town for fines collected. Why does this just cover nine months? Mr. Roosa said that was the easiest part for them to research quickly, but they will still be working on the remaining time. We have not waived any of the prior monies.

B. DAN HUGHES

Mr. Hughes said that the amount we are scheduled to receive for fines seems like a minimal amount of money. What percentage do we get? Mr. Roosa said we get less than 50%.

C. GARR REYNOLDS

Mr. Reynolds reported that he attended the conference on Beach Preservation Technology last week. He will give a more detailed report later.

He also mentioned the MSBU on Palmetto. He has received calls from some residents on that street. They want to be full participating members of the community because they have been paying taxes all these years.

D. RAY MURPHY

Mr. Murphy thanked Mr. Mulholland for chairing the meeting when he was gone. He went on record to thank the outgoing members of the LPA also.

E. ANITA CERECEDA

Ms. Cereceda had no items to bring before the council.

XI. TOWN APPOINTMENTS

A. REAPPOINTMENT OF REPRESENTATIVE AND APPOINTMENT OF ALTERNATE VOTING MEMBER TO THE COASTAL ADVISORY COUNCIL

Mr. Gucciardo said the significant change this year is that, besides the town representative, each appointee can now have a secondary proxy with voting right when the main person is not there. We need to formalize the appointment and name an alternate. Up to this point, Ms. Cereceda has been representing the town and he has been attending the meetings also. It was determined that Ms. Cereceda is willing to continue to serve and that Mr. Gucciardo is willing to be the alternate.

XII. TOWN MANAGER'S ITEMS

A. UPDATE ON BARRIER ISLAND TRAFFIC STUDY

Mr. Gucciardo said that the council has been copied with his latest letter to Glen Ahlert. He has had no formal response to the letter. He asked for direction from the council. Unless we get a response he would like to consider withdrawing our support and ask for our money to be returned. He is concerned about the scope and that we want the survey to be held at least one weekend day. The logistics are frightening if they are not handled in the correct way. Mr. Gucciardo will attempt to keep the dialog going.

B. UPDATE ON SOUTH END SIDEWALK PROJECT

Mr. Gucciardo said he is in regular contact with the inspector and chief engineer. They are about 1 or 2 weeks away from completion. The other project that is going on at the same time and may affect the sidewalks is the boring project for sewer lines. Depending on how that is resolved, they may need to halt our project and then resume. We have been assured that before any final payment is made, we will be able to walk the project and list our concerns. There are some safety issues not counting the aesthetic issues. Mr. Reynolds said some sections look like they are at more than 5% elevation and some are tilted side to side. Mr. Gucciardo said the dips and sharp drop-offs are to maintain drainage. They are putting in railings at those points.

C. UPDATE ON PURCHASE OF FLORIDA CITIES WATER BY LEE COUNTY

This item was covered earlier in the meeting.

XIII. TOWN ATTORNEY'S ITEMS

Mr. Roosa asked the council what goal they would like to expect from this purchase from Avatar. One goal might be an interlocal in the nature of a contract or franchise for both water and sewer service and an allocation of gas tax. Mrs. Segal-George said she would like to see a freeze on our rates for five years and at the end the council would have input on any increase. She would also like a signoff every year on the sewer contractor to see if they are performing properly. Her third goal is the gas tax. Mr. Roosa asked if we could get that in an interlocal agreement, would it satisfy the council? Mrs. Segal-George said that she asked Mr. Owen last week if they would guarantee no increase in rates and they looked at her like she was crazy. They think if we are part of the county system, we have to pay the same. Mr. Roosa said we would need to get that agreement quickly. Mayor Murphy said he would call Ray Judah to start the dialog.

XIV. PUBLIC COMMENT

A. DAN PARKER

Mr. Parker said he has addressed this before and he doesn't know if staff has been directed to do anything about this matter. He handed out a map of two locations that are designated in county records as accesses. There is a 50 x 120' property for sale that the only way to get to it is through the access. The lots north of that also use the access as a driveway. Going northwest of that there are no driveways on Estero.

All of them use driveways on Strandview or the 20' beach access. Mr. Murphy said there is a driveway that comes off the access. Mr. Parker said that on the other map there is a 10' right of way. He cautioned the council that they are giving away this property by not saying anything. They are not taking care of it and maintaining it. We are in essence vacating it.

XV. ADJOURNMENT

Motion: Mr. Reynolds moved and Mr. Mulholland seconded that the meeting be adjourned. The meeting adjourned at 11:43 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary