

**FORT MYERS BEACH
TOWN COUNCIL MEETING
FEBRUARY 22 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 22, 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 Ms. Cereceda.

IV PUBLIC COMMENT ON AGENDA ITEMS

A. HELEN CALDWELL

Mrs. Caldwell said she is pleased that the council would be interested in bringing Lover's Key into the town. She is sure the state would be glad to know that the town is interested in preserving our natural resources. The town must protect, educate and become more aware of what can be saved in our quiet zones. We don't have the pristine island that attracted her in the 60's, but there is still much that can be done.

B. NORBERT DEMARS

Mr. Demars owns a property on Connecticut Street. He asked the council to place on the agenda an airing of issues concerning the Mound House. There are numerous proposed uses of the property that are of concern. Also they want an accounting of all funds that have been spent on the Mound House to date and what costs will be incurred in 1999 and on out. The citizens need a full understanding of the intended use. They would also like a timetable about the proposed rezoning from residential to commercial.

C. MICHAEL DEPEW

Mr. Depew is a resident of Black Island. They are opposed to annexation. There may be increases in taxation. The level of service is adequate for their needs now. Bonita Springs is interested also and they would make the same statement to them. They wish to remain unincorporated.

D. MELODY HORNING

Ms. Horning took a poll of all the voting residents of Black Island. They sent the results to the Town and the County and also the State. They are one of the few unincorporated islands in Florida. They would like to preserve that uniqueness.

V CONSENT AGENDA

Mr. Hughes pulled the minutes of February 1 and the Resolution on Matanzas Inn. Mr. Reynolds pulled the minutes of February 8.

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

Minutes of January 21 and January 25, 1999

Financial Reports for January

Approval of NPDES Annual Report

Consideration of items pulled for discussion:

Minutes of Feb. 1: Mr. Hughes wished to clarify that at the top of page 7 in the motion about hiring Burton and Assoc. when it says "request that it be continued" that "it" refers to the county's rate hearing. He also noted that on page 9 on the motion to continue the hearing on the Vessel Control and Water Safety Ordinance, there is no second reported to the motion. He seconded that motion.

Motion: Ms. Cereceda moved to approve the minutes as corrected. Mr. Mulholland seconded the motion. The motion carried unanimously.

Minutes of Feb. 8: Mr. Hughes said that on page 6 he introduced a resolution about the Florida Cities Water acquisition. The minutes only reflect the motion. He had a detailed resolution and Mr. Roosa added an additional clause. He thinks the resolution should be incorporated verbatim as amended. Mr. Murphy said the resolution is referenced and so is the modification.

Motion: Ms. Cereceda moved approval of the minutes. Mr. Mulholland seconded the motion. The motion carried unanimously.

Resolution on Matanzas: Mr. Hughes said his motion on page 4 of the minutes of February 8 is correct but all the changes were not made to the resolution. In the whereas clause, the word "restaurant" is still missing. There was also a provision that the conditions of approval were to include Lee County Resolution Z95-074 and that is not included.

Motion: Mr. Mulholland moved to table this until the next meeting so the corrections can be made. Ms. Cereceda seconded the motion. The motion carried unanimously.

VI. ADMINISTRATIVE AGENDA

A. 1998 AUDIT REPORT

Marty Redovan of Schultz Chaipel gave a report on the 1997-8 audit. He thanked John Gucciardo and Peggy Salfen for their help in the audit and congratulated Mrs. Salfen for keeping excellent financial records for the Town. He noted on page 1 that this is normally an unqualified opinion. This year is different because a new standard has been added regarding disclosures of the Year 2000. The town does not have a lot of mission critical systems, but it does have a number that can affect the town that we have no control over. So the bottom line is that he cannot say that all problems have been cured. It is not a reflection on the town about whether they are 2000 compliant. Other than that, it is an unqualified opinion. On page 3 he noted that there has been a significant increase in cash and investments. We had impact fees that came through this year and the tourist development grant and an increase in gas taxes. In previous years we had a \$500,000 line of credit that we did not have this year. The rest is consistent with the prior year. One of the newer reports is on page 17 and 20. This deals with financial awards that the town may receive from the state. We did not reach the threshold of \$100,000 before. The tourism grant came through this year so it requires a different report. On page 22 are the management letter comments and on page 24 are the town manager's responses. There is nothing of real significance there. Mr. Mulholland said on page 2 it says the town has omitted such disclosures about Y2K. It seems that it was never brought up to the town before this. He thinks the town staff has done an excellent job and has fixed everything from last year. He feels the procedures in place are more than adequate. Mr. Redovan said that regarding the year 2000 issue, the technical bulletin talks about "mission critical" and it would be an onerous job to investigate that, so they felt like it would be better to go with the admitted disclosures. But he as an auditor cannot attest, even if we told him so, that everything is fixed, so he felt that this would be a better way to go. In the smaller districts and municipalities this has been the trend. Regarding the comments in the management letter, he said there is a policy in place, but in their testing, they ran across a few examples, but they are not saying it is pervasive. Mr. Mulholland said what better control can you have than the someone signing a check saying this statement is correct? Mr. Redovan said that a time sheet is not required, but there should be some record that time has been used. When someone can be paid out of accrued vacation leave, you need to have some record of when it was used. He does not disagree with the Town Manager's response. The council can make a decision whether they think that is an adequate fix. If they do, it is finished. But he did not want to be in the position of leaving something out because he did not think it was a big deal. Mr. Hughes said if they are comfortable with the policy and they do nothing, will it be on there next year? Mr. Redovan said if nothing else is said, it will not be raised again. Mr. Hughes asked why the necessity for three opinion letters. Mr. Redovan said they have to do the reports under government standards. They are required reports that must be in that language. Mr. Reynolds asked, regarding vacation and leave, if larger governments normally keep track of their employees' time. Mr. Redovan said it varies. Most do not track 8 hours every day, but use a form when any leave is taken. Others do bi-weekly time sheets that account for every hour. Mr. Reynolds said he has a problem with not keeping record of vacation leave. He would like it kept in another way. He does not believe that noting on the check is adequate. He has no objection if it is brought back next year. Ms. Cereceda said her hat is off

to the staff for keeping everything in top shape. Mr. Murphy noted that the audit is available at Town Hall for anyone to look at.

**B. PUBLIC HEARING: PETER AND SUSAN LISICH 95-07-043.02Z 02.01
(CONTINUED FROM FEBRUARY 8, 1999)**

**C. PUBLIC HEARING: PETER AND SUSAN LISICH 95-01-035.03Z 02.01
(CONTINUED FROM FEBRUARY 8, 1999)**

Mr. Roosa confirmed that persons who were sworn in at the previous meeting, are still sworn in. It was confirmed that everything in the previous meeting is part of the record.

Carleton Ryffel, representing Peter and Susan Lisich, said that the applicants are requesting to transfer seven units from Abaco Beach (a three story building on the bay) to Casa Playa. The applicant has permission to build an additional 7 units on the Abaco Beach property, but rather than tear that building down and build a 4-story building over parking, the units could be added to Casa Playa without changing the outer appearance. The county staff agreed that this would be a consistent request. The LPA agreed unanimously. The applicants agree to all the conditions. He requested that the council vote on the Casa Playa first then Abaco Beach. Mr. Lisich gave the history of the project. He and his wife own and operate both properties. They are proud of the improvements and renovations they have made and their involvement in the neighborhood. They live at the Abaco Beach property. In late 1995 they received building permits for Casa Playa and the town came into existence at the end of that year. In 1996 the Civic Association filed lawsuits regarding certain properties including Casa Playa so they did not begin construction and they lost their financing. After the suits were settled, they got their financing back and reevaluated how they wanted to use their buildings. They had an informal review with the county where he proposed what is before the council tonight. Ms. Houck was part of that meeting and they agreed that this was a fairly simple thing to do. They then went to their attorney, Beverly Grady, and she said that under the present hostile attitude of the town, she recommended they complete construction, get a certificate of occupancy, then come before the council with this request. The architect came up with a way to make the change possible by adding wiring and a sprinkler system and adding a firewall. The county approved it and all installations were approved by the fire department. They finished their building and got their CO and went through the process to get here tonight. Casa Playa had to meet all the parking requirements, and before they can make these changes they will have to meet the new parking requirement. He said there was always a future plan to use the units as two units. It is primarily a fire issue. Mr. Hughes said it is his understanding that if the Council were to deny this, that the 7 units at Abaco could be transferred elsewhere in the Pink Shell CPD. Mr. Lisich said no. Mr. Reynolds asked if Mr. Lisich will be able to go back later and ask for the 7 units again. Mr. Lisich said it will be removed from the development order if this is approved. Ms. Cereceda said she has spoken with Mr. Lisich at length and she made a site visit. It was clarified that the lawsuits were filed against the town. Mr. Lisich said they were filed against the town, but he was not named as a party. Lee County filed a motion to become a party and so did they so the court couldn't hear the suit without their being present.

Pam Houck said one request (03Z) is an amendment to a CPD (Pink Shell). The recommendation of staff is approval with conditions (development order to reflect 5 units, schedule of uses, and conditions set forth in Resolution Z95-017 except as amended, and deviations 2 and 8 are to be rescinded.) The other request (02Z) is an amendment to a CPD to add 7 units. A traffic engineer was asked to review this and determined there would be no traffic impacts created by the transfer. The primary concern was parking. She added a condition of approval which would require that they submit plans for a development order to review the off-street parking. Mr. Mulholland asked if the parking has been resolved. She said that will not be resolved until they submit plans. Ms. Cereceda asked if tearing down the Abaco Beach building and rebuilding it would require any variations for height. She said no—that height has already been approved.. Staff believes that the transfer will not create incompatibility or impacts.

The public hearing was opened.

1. Bill Patterson

Mr. Patterson lives across the street. He said Casa Playa does not have enough parking spaces already. They had the building all done and the fire marshal caught him.

The public hearing was closed.

Mr. Lisich said the staff and LPA unanimously recommended this after looking at it very carefully. He said their parking lot is one-third empty even when there are fully occupied because they are required to have 1.5 spaces per unit but hardly anyone brings 2 cars and some bring none. They will

continue to have 1.5 spaces per unit. They currently have 44 spaces and they will have 55 spaces. Parking will not be an issue.

Motion: Mr. Hughes moved to approve the request at Pink Shell, adopting the language of the LPA resolution and incorporating the conditions of that resolution and the conditions of Pam Houck and also the conditions of the prior Lee County Resolution Z95-017 with the additional requirement that condition 3 in the LPA resolution make a provision that the number of units be reduced from 59 to 52. Mr. Murphy seconded the motion. **Discussion:** Mr. Hughes said all 9 of the LPA approved this, addressing the whole picture, and the county staff also recommends approval. While increasing the number of units at Casa Playa by 7 will increase density, it will not increase intensity. In exchange they are reducing the potentiality of 7 units. Mr. Reynolds said he feels the council went in a questionable direction when they approved Pink Porpoise. He is concerned they are setting a precedent. He still can't understand why someone would build a 35-unit building when they were only allowed 28 units. He doesn't mind variances that bend a little but this is asking a lot. Ms. Cereceda said she can't understand why the county approved 12 units at Pink Shell. Are we capable of dealing with the impacts that are at the north end now? Currently those 7 units have no impact on our infrastructure. Our approval of transference would create an immediate impact. We don't have to deal with the CPD now although we will have to live with it eventually. Mr. Mulholland stated that he had a conversation with Mr. Ryffel concerning this case. **Action:** Mr. Mulholland, aye; Mr. Hughes, aye; Mr. Reynolds, no; Ms. Cereceda, no; Mayor Murphy, aye. The motion carried.

Motion: Mr. Hughes moved that the request at Casa Playa be approved according to the LPA resolution, correcting the number of 28 units to 35 units and changing the legal description. Mr. Murphy seconded the motion. **Discussion:** Ms. Cereceda said she does not believe it is good policy for this town to bit by bit take apart CPDs, because they are planned as a whole, and taking any number of units and transferring them to other units that have not been given the same consideration. Mr. Mulholland said he voted against this at the last meeting, but he listened to Mr. Lisich and the county staff and he is satisfied that this is not an increase and does not create a problem. As for taking apart a CPD, Mr. Murphy said it was not one we approved--the county did, and this is not necessarily a bad thing to do. We will just have a couple more units in a building that you don't have to change instead of rebuilding. Mr. Hughes said this does not create a precedent. Zoning hearings are dealt with on an ad hoc basis. He does not know of others that would fall under this, and he does not regard this as a dangerous precedent. Ms. Cereceda said that by denying this, we would not be denying him anything that he has a right for. We would not be taking away anything. **Action:** Mr. Mulholland, aye; Mr. Hughes, aye; Mr. Reynolds, no; Ms. Cereceda, no; Mayor Murphy, aye. The motion carried.

The council took a break at 8:07 PM and reconvened at 8:23 PM.

D. PUBLIC HEARING: AMENDING THE VESSEL CONTROL AND WATER SAFETY ORDINANCE (RESTRICTING AIR BOATS IN THE BACK BAY) - CONTINUED FROM FEBRUARY 1, 1999

Mr. Mulholland asked Ilene Barnett to speak. Ms. Barnett said has worked for the county and the state (DEP) and has worked at Big Cypress and Everglades. The Marine Resources Task Force was appointed by the Town Council to deal with environmental issues. The area outside of the town's jurisdiction still has concern to them. The MRTF hasn't yet had a chance to work on a back bay management plan, but they will in the near future. They will be addressing the appropriate usage of all kinds of vessels, but the airboat issue is timely now. They do not have a lot of activity now and we can save a lot of heartache in the future if we address it now. The main environmental impact is the airboats are much louder than most other boats. The other issue is the impact to the shallow estuary system and wetlands. Most vessels except canoes and kayaks and jet skis cannot get in these shallow areas. Jet skis can do some damage, but mostly they are used in deep water. Airboats were designed to get into the marshlands. She handed out an aerial photograph of the Big Cypress Preserve. It shows scars on very shallow freshwater marches from airboats. They are having a hard time shutting them out because there are so many there who are operating commercially. She also cited a study about disturbance of nesting bird colonies by the Game and Fish commission. It compared the impacts of someone walking slowly toward a nesting colony, canoeing near a nest, using a small boat with 30 hp motor, and using a 14-foot airboat. The airboat impact was much more than any of the other three. All species were affected. The minimum

setback for approaching protected wading birds should be almost 1000 feet. She cited a letter from Nancy Douglas, a biologist with the Freshwater Game Commission that said that most sensitive species react at 200 meters. In Estero Bay it would be difficult to operate airboats without disturbing. There are two national wildlife refuges that have already banned airboats. She read a report that the extreme noise generated by the airboats disturbs the nesting eagles even when they are outside the preserve boundaries. The other impact is from shallow areas. She read a letter from an expert on mangroves who said that airboats form a large wake and that causes erosion and changes the sediment patterns which mangroves are very sensitive to. She read another letter that said the pressure of the airboat hulls causes compaction of fragile soils. They recognize that other boats have impacts but she recommends the council look at it now before it proliferates. Mr. Reynolds asked if there is air damage by the wind created by the fans. She said that was mentioned in one of the letters to the MRTF. Mr. Hughes said the issue this evening isn't about unlimited operation. There are two proposals, one is from the MRTF to totally ban them in our waters. They also have a modified proposal that will limit them to idle speed and no commercial activity at all. He doesn't question the adverse affects when these boats are operating at full speed, but do any of the studies address impacts if they are operated at idle speed and not in sea grasses but in an open channel? He said it would allow the boat to go around a small portion of San Carlos Island so they can get back to Hurricane Bay. We already have jet skis and power boats there now and they are not required to idle. What she is addressing is not within our jurisdiction to deter. Ms. Barnett said the issue is banning airboat entry from our town into the rest of Estero Bay. We have stewardship responsibility in the whole bay and once they get past our town limits they will be causing effects which will have spinoff impacts on our town and economy. Ms. Cereceda asked about allowing private or personal usage at idle speed only within marked channels. Ms. Barnett said the effects of an airboat at idle speed in marked channels would be negligible.

The public hearing was opened.

1. Michael Short

Mr. Short owns a house on the back bay. People come here for the beauty of nature and to enjoy the tranquility of the back bay. Airboats have no place in it. They are very noisy and can be heard even when they are not seen. They spoil the enjoyment of residents and visitors. Even the customers on the boats must wear ear plugs. They have environmental impacts on plant and animal communities. Why should we open our back bay to airboats when they are being restricted in other areas for very good reasons? If you ban them from the back bay they cannot get into the other areas. If you allow them at idle speed, then you cannot control them. He is not anti-business, but airboat businesses will harm the other businesses that promote tourism and fishing. He asks for a unanimous vote to prove that the council is for the environment.

2. Mary Rich

Ms. Rich said she has lived on the back bay for one year. Before a few weeks ago she had never heard one, but recently she was in the house and heard a tremendous noise. She thought a plane was coming down. An airboat was flying right along the edge of the mangroves. There is an osprey nest and the osprey took off. She saw the chaos that they can cause. There are a lot of noisy boats, but nothing like this. They don't run in the channel and they don't run at idle speed. She knows it is not a big problem now but she doesn't want to open up the problem.

3. Dick Rich

Mr. Rich said they are not anti-business, but the noise created is incredible. It is like a jet engine and the noise can go on for hours. When he heard it the first time he was on the phone about 600 feet away and he had to hang up the phone, even with the window closed. Human ears are not going to be able to take this. Banning this could eliminate future problems. If you call the sheriff's department and report something, the boats are long gone. You can't read the number on the boats when they are going that fast. If you allow them at idle speed, you are going to have to enforce it.

4. Terry Cain

Mrs. Cain stated that she has a degree in marine science and she has lived here for 23 years. Residents near or on the water understand how sound carries on the water. Noise pollution is annoying and uncomfortable to humans and animals. We are trying to keep a healthy preserve. Airboats do not belong in Florida's first aquatic preserve.

5. Joel Bullucci

Mr. Bullucci said he doesn't believe an idle speed zone will help because it will be difficult to enforce. Law enforcement can't be everywhere. Also once they leave our waters they will go full speed and you can still hear them. If there is a ban it will make it more difficult for them to get there. Also it may

jumpstart other jurisdictions to ban airboats in other areas. Last week he went out looking for paths that the airboats use because they need wide channels. They found that the mangroves have been cut. It is possible they were cut before the airboat got there. That channel may not be available soon to any operators. Then airboats will have to come back to the town's waters. We can have a strong effect if we want it.

6. Harold Huber

Mr. Huber said he lives on the southern end and he has witnessed the airboats in the back bay in Rocky Bay. Airboats do not need to be here. Our water is deep enough for propeller-driven boats.

7. Jack Henriksen

Mr. Henriksen said he is representing the Civic Association. The board of directors unanimously requests the council to ban all airboats from the waters of the town.

8. Bob Keene

Mr. Keene said he is a member of the Caloosa Bird Club. They make weekly field trips to enjoy the birds and try to protect them. He asked the council to do everything in their power to keep the airboats from operating in the town waters.

9. Al Oerter

Mr. Oerter is a resident of Ocean Harbor Condominium. Last Friday at 10 AM he started hearing an airboat for 10-15 minutes before you could see it. As the boat is traversing the back bay you can see the birds constantly taking flight. The sound continued for another 10-15 minutes after that. The boat went into areas he has never seen another boat go into. This is the nesting season. If they don't ban airboats outright, at least consider banning them during nesting season. It is disruptive to the birds and the shallow areas.

10. Don Moore

Mr. Moore said it boils down to whether we want more noise or not.

11. Heather Stafford

Ms. Stafford works for DEP, and is manager of the Estero Bay Aquatic Preserve and the buffer preserve. She has a degree in oceanography and a masters in marine biology. The DEP encourages local governments to take action to protect our resources. Airboats are not a traditional use in that area. The proposed resolution banning them is not inconsistent with the statutes or the management plan. Their office would pursue enforcement of any damage caused by a vessel or illegal trespass or mangrove cuttings. We are not just talking about one airboat. Idle speed wouldn't make any difference in the sound level. They are difficult to operate at a idle speed because of wind current and tides. There is no reverse on airboats. You can hear an airboat from over a mile away.

12. Betty Crawfis

Ms. Crawfis has been a resident for 15 years. Her issue is with the noise. We have ordinances against excessive noise and you can't operate them without speed.

13. J. F. Vickers

Mr. Vickers has lived on the beach for 10 years. In the 10 years he has seen the beach degenerate with lack of enforcement on the water. 70% of all people ignore the idle speed and they are not stopped because there is no enforcement. They have even seen a seaplane take off from Waterside. An airboat is unsuited in this part of the world. It spoils it for everybody. He almost got hit by an airboat when he was sitting in a small boat and the airboat came at them at a great rate of speed.

14. Steve Goodbread

Mr. Goodbread, operator of Pelican Tours, said airboats are allowed in the Big Cypress Preserve. There are areas that are allocated for airboats. The amendment for idling in our waters is a good idea. Some of the comments he has heard were not about his airboat. Private airboats and commercial are different. They have no mufflers and are meant for high speed and that sound does carry. He has been operating here for months and didn't have a problem. He has done everything he can do to stay away from Fort Myers Beach. He only crosses a very small area. It would keep all other airboats out of the back bay. He is a licensed captain and he wants to protect as well as anyone else. Any boat or car or vehicle or plane will harm the environment. An airboat does less damage. Other motors use water to cool down the engine, then when it is returned to the water it adds gas and oil. There are a lot of propeller scars out there. The MRTF people were not looking behind them to see what damage they were doing with their propeller when they were out there. Getting a captain's license is very difficult in this state. He knows what he is doing.

The public hearing was closed.

Mr. Hughes asked Mr. Goodbread about the scope of his license. Mr. Goodbread said his license specifically says "Back Bay Tours" and "Estero Bay" and it was issued by Lee County. Mr. Hughes asked if he can get to where he wants to go without getting in our territorial waters. Mr. Goodbread said yes, but not from the dock where he is now. Mr. Hughes asked what is the definition of Estero Bay since he is licensed there. Ms. Stafford said that from the Matanzas bridge to Bonita Beach Road is part of the Estero Bay Aquatic Preserve but she is not sure what Lee County means by it.

Motion: Mr. Mulholland moved that the original ordinance banning airboats from the back bay be adopted. Mr. Reynolds seconded the motion. **Discussion:** Mr. Mulholland said airboats are clearly a commercial intrusion because of their excessive noise. He went out the other day to try to find the path that Mr. Goodbread uses to get to the back bay and they almost had a collision. The mangroves had been cut to allow boats to go through the path. He will call for an investigation by DEP. He will request that it be closed to all boats. It is illegal to cut the mangroves. It is time to protect our residents and we must protect Estero Bay. He believes that banning airboats falls under the Conservation element of the Comp Plan that directs them to protect the natural resources and improve the condition of our estuaries and bays. Ms. Cereceda said that Ms. Stafford's use of the words "traditional public use" has changed her mind. For a long time Mr. Goodbread was out there without a single complaint. Now the town is in an uproar. She would hope that if the direction of the MRTF and the council is going to be the preservation of the bay, that this ordinance will be a stepping stone to initiate conversation with other agencies to ban them in all areas of the back bay. Our ordinance is only going to make Mr. Goodbread take his boat to another location. Mr. Hughes said he is not in disagreement with Mr. Mulholland. He took advantage of an offer by Mr. Goodbread to ride in his airboat but apparently no one else did. They went up to two osprey nests and they weren't disturbed. They got close to a sandbar and the birds did not fly away. He is not a supporter of airboats in general, but he was concerned that we were putting someone out of business. Mr. Goodbread pointed out the cut mangroves to him and he does not believe Mr. Goodbread was responsible for that. He just discovered that channel recently. He would like to have seen an ordinance that is much more comprehensive than just airboats. Jetskis are much more obnoxious in many ways. He feels there is some element of discrimination in what we are doing. We won't necessarily put Mr. Goodbread out of business. We are accomplishing very little with the adoption of this ordinance and we have a long way to go to protect the back bay. Mr. Mulholland said the MRTF will go to other area agencies especially the BOCC, but this is the first step. He wishes no ill will to Mr. Goodbread. His boat is loud even though it may be modified. He wishes he would operate his airboat somewhere else. **Action:** Mr. Mulholland, aye; Mr. Hughes, aye; Mayor Murphy, aye; Mr. Reynolds, aye; Ms. Cereceda, aye. The motion carried unanimously.

E. FIRST READING: LOITERING ORDINANCE

Mayor Murphy read the titles. The ordinance was set for March 1 for public hearing.

F. DISCUSSION OF POSSIBLE ANNEXATION OF BLACK ISLAND AND LOVERS KEY

Mayor Murphy said that this was on the agenda in order to solicit public comment, which was done at the first of the meeting. Mr. Hughes said he would like to have asked them if they would rather be in Fort Myers Beach than Bonita if they can't stay unincorporated. Ms. Cereceda noted that they will only have about 12 votes against incorporation of Bonita. Mr. Murphy said he didn't have an opportunity to tell them they would be paying lower taxes to the town than the county. Mr. Mulholland said he applauds Mr. Murphy's efforts. He thinks it would be a marvelous opportunity. Mr. Murphy said he has spoken to some residents of Black Island. He will try to make a few calls and talk about it with the residents. Ms. Cereceda suggested a workshop. Ms. Cereceda said it is important to initiate conversation with the Bonita Incorporation committee if they have already drawn their lines to include it. Mr. Murphy said when the article hit the News Press, they said they don't want to get into a contest over that area. If they would rather go to Fort Myers Beach, he would support that, but if they prefer the proposed city of Bonita Springs he would support that. He doesn't want to get into a duel with Bonita Springs, but he wants to bring in lands that have historically been part of our community. Mr. Reynolds would like to see what liabilities come along with that. He thinks it is a good idea to get back with the people from Black Island and talk to them. He is in favor of exploring this. Mr. Hughes asked if they are included in the scope of the Bonita plan that was presented to the legislature, do they have a way of opting out if we do nothing?

Mr. Roosa said they could until such time that Bonita could establish that they are providing municipal services. Mr. Hughes asked if we annexed that area, would all of our ordinances that are in effect, including our water ordinance stating 1000 feet, apply. Mr. Roosa said yes. Mr. Hughes said you are taking in lots of water and we already have an enforcement problem, but on the other hand it would be an opportunity to do some things there that we are trying to do here.

G. APPOINTMENT TO THE BAY OAKS ADVISORY BOARD

Mr. Murphy said that three people have expressed interest in the opening: Diane Jones, Laurel Ludvigsen, and Brian Petersen. Mr. Hughes moved that all three names be put in nomination. Mr. Murphy seconded the motion. The Council members filled out written ballots and signed them. Mrs. Segal-George announced that Mr. Peterson was elected.

VII. COUNCIL MEMBER ITEMS AND REPORTS

A ANITA CERECEDA

Ms Cereceda had no items to bring before the Council.

B GARR REYNOLDS

Mr. Reynolds recommended that the council study the transfer of units from one CPD to another because it affects the town in the long term.

Regarding his question to Pam Houck, he clarified that his conversation with a director was 18 months ago and regarded measuring a lot to the middle of a canal and street in order to allow more density. He clarified that he did not have any conversations with anyone about that particular case.

C DAN HUGHES

Mr. Hughes asked if there has been any development with Mr. Wiebe on the parking garage. Mrs. Segal-George said she spoke with him and he is going forward in trying to get an agreement with Mr. Helmerich. Ms. Cereceda said that the Coastland Center parking has ornamental work on it and Mr. Wiebe has agreed to it. Mrs. Segal-George said Mr. Spikowski looked at the model and will probably talk about it Thursday night.

He asked whether we had heard back about the resolution banning live shelling. Mrs. Segal-George said that the Marine Fisheries Commission is having a meeting this week where they will discuss our request and notify us.

D JOHN MULHOLLAND

Mr. Mulholland said he has been wondering how to communicate better with the residents. He invited people to call him. He is also thinking about a web site.

He thinks it is time to evaluate the Town Manager again. He would also like the council to discuss the evaluations at a meeting in public.

Regarding beach accesses, there are a couple that are not being used and he is afraid we might lose them. He asked town staff to look into the status of that.

Regarding the audit, he said that he is satisfied that what is in place is good. He applauded the town staff.

He asked Mr. Gucciardo to tell the Public Safety Task Force that the signs at the beach accesses are good and they will help in case of emergency.

E RAY MURPHY

Mr. Murphy said it was brought to his attention today that Mr. Reynolds has declined the opportunity to be vice-chair of the MPO. After vice chair he would have been chair, and he thought that would have been a good opportunity for the town. If we don't do it, it will go to Sanibel. He asked if we could put someone else in that slot and still have Mr. Reynolds on the MPO. If someone else wanted to assume that vice chair then the town would have the chairmanship in about a year, which he thinks is important. We are not concerned with a lot of big road building here, but we are concerned about the ISTEAM monies, etc. that can become available to the town. If no one else is interested, he would be willing. He asked the council to think about it. Mr. Reynolds said he had a personal reason he could not serve on it and he doesn't mind at all if Mr. Murphy wants to take his place. He felt like he gave good input into the MPO while he was there. One of his main issues is that Summerlin is becoming overbuilt.

VIII. TOWN MANAGER'S ITEMS

The Town Manager had no items to bring before the Council.

IX. TOWN ATTORNEY'S ITEMS

A. PARAGLIDING ORDINANCE

Mr. Roosa said that the draft ordinance is to encourage their thinking. The problem is describing what a paraglider is so that people will be put on notice that they are prohibited. Mr. Mulholland said is he describing someone who has a motor strapped on their back that propels a parachute. Mr. Roosa said that would be included as an aircraft. He said he understands they can be operated without a pilots' license, so he figured that would eliminate them. He has never seen one himself. Mr. Bellucci said a paraglider is of two types. The fixed-wing version is also called an ultralight. The other kind is a parachute type. He will put together some illustrations and verbal descriptions.

B. ORDINANCE REGULATING THE SPEED LIMIT IN THE CHANNELS

Mr. Roosa said that he put this together to start conversation about what they are trying to accomplish. Mr. Mulholland said that is not what he intended. He suggested bringing it back to MRTF and letting them discuss it and bring it back.

C. BAY BEACH LAWSUIT

Mr. Roosa said that he has provided an outline of the lawsuit and he has talked with Mr. LaCroix, who is a top land use lawyer. He explained that in addition to the lawsuit, we need to resolve this. He said we need to resolve it legislatively through the Comp Plan, which we are doing now. He asked that Mr. LaCroix be hired to defend this and also advise us on what they are vested in.

Motion: Mr. Hughes moved and Mr. Mulholland seconded that Mr. La Croix be hired. **Discussion:** Mr. Hughes said his concern is that he is a sole practitioner and this could be quite lengthy. Mr. Roosa said he has agreed to \$125 per hour. Ms. Cereceda asked who else Mr. Roosa looked at. Mr. Roosa said he asked Bob Pritt who gave him some local attorneys, but Mr. Roosa was a little concerned about local attorneys. Most of them have had some involvement with the county. **Action:** The motion carried unanimously.

Mr. Hughes expressed concern about Mr. La Croix's preliminary action of a motion to dismiss. He said he is not sure a procedural victory is such a good idea. He would like to meet with him and discuss strategy. Mr. Roosa said this will not solve this issue, but this will give Mr. Spikowski time to work on this legislatively. He is concerned about pursuing this on merits because we are not prepared yet. We need to get it dismissed and then pursue it legislatively. It will be easier to defend then.

XI. PUBLIC COMMENT

A MAURICE O'CONNELL

Mr. O'Connell spoke on Publix. There is a position paper from their neighborhood that brings up some serious concerns. A serious lack of parking creates a threat to their central services. The overload will spill out on Estero and will block emergency vehicles. Homeowners insurance could be affected. Publix could attract up to 300 cars. Please reconsider this high impact project and relieve the city of a great future liability. On February 17 he went to look at a Publix store. At 8:30 A.M. there were 123 cars. At 4:30 P.M. there were 350 cars. Our project only calls for 150 parking spaces. When that is filled up with delivery trucks and patrons plus beachgoers, it will become overwhelmed causing a complete blockage on Estero. Please open it back up and put it on the agenda to consider and do some expert studies.

B JOEL BELLUCCI

Mr. Bellucci thanked the council for the process to protect Estero Bay that started tonight. He also said that he is updating the web site. If anyone has new picture or updated information, put in his mailbox. Ms. Cereceda asked about a different address for the web site. He said he is working on getting ftmyersbeach.org.

C TERRENCE GRIFFIN

Mr. Griffin said the Publix decision was inept because of the pollution and noise and traffic. He will be contacting the EPA and monitoring it every day. He does not think the lawsuits will end here. It will not benefit him as a homeowner living next door to the Publix.

D BETTY CRAWFIS

Ms. Crawfis said she is concerned about health, safety and welfare regarding Bay Beach. Vested rights can be revoked if you show that it is detrimental to health, safety and welfare that was

unknown at the time. If they are permitted to go ahead with 1731 units, that means that 1485 units will be using Bay Beach Lane. There is no construction entrance. They have filled in the ponds. They are in trouble with fire and emergency vehicles. She has been asking for over 20 years about the bathroom facility on the golf course. The e coli count is too high.

E PATRICIA HEBERT

Ms. Hebert said she is a recent owner on the beach. She sat here for four hours to talk about the issue of Publix, and it was uncalled for for a councilman to say they had heard enough garbage about Publix. Mr. Murphy clarified that Ms. Hebert misunderstood and he did not say that.

XII. ADJOURNMENT

The meeting adjourned at 10:45 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary