

**FORT MYERS BEACH
TOWN COUNCIL MEETING
MARCH 15, 1999
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

Mayor Ray Murphy opened the meeting on Monday, March 15, 1999, at 6:33 P.M. Present at the meeting were: Mayor Ray 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.

Excused absences from the meeting: None.

II. PLEDGE OF ALLEGIANCE

All assembled at the meeting recited the Pledge of Allegiance.

III. INVOCATION

John Mulholland gave the invocation.

IV. PUBLIC COMMENTS ON AGENDA ITEMS

A. DAVID OWEN

Mr. Owen, Assistant County Attorney of Lee County, was here to speak with regard to VII., B., of the Administrative Agenda -- the County's proposed acquisition of the Florida Cities Water Company. He advised that Town Attorney Dick Roosa had developed a document that covers not only the water as indicated on our agenda sheet tonight, but also the waste water system with respect to a number of items. Mr. Owen passed out a short document that breaks down the issues as they see them.

Mr. Owens said we might want to consider becoming a partner with the County with respect to the acquisition of Florida Cities Utilities. We would get the benefit of the expanded capital system. There are advantages to a comprehensive unified rates system. When you have a large customer base, the cost of doing any work in any part of the unified system is diluted by that customer base.

The County would like to enter into an interlocal agreement with the Town if they can persuade the Town to proceed with the interlocal without the gas tax issue. If the County proceeds with litigation and wins, the Town will not receive the benefits of any additional 5 and 6 cents gas tax allocation nor will the Town receive the benefits in the interlocal agreement that are being offered. The Town may also expose itself to some legal liability as a result of the proceeding. On the other hand, if the Town were to win the case, the Town would not receive any increase in the allocation of the 5 and 6 cents local option gas tax. The Town would not receive the benefit of any of the matters with respect to the interlocal agreement. As part of this, if the Town would be successful with respect to the injunctive relief request, then the County would be looking to the court to ask them to post a bond while it goes through the process.

Mr. Owen said that they would like to reach an accord, an agreement. They have reached the point where the only issue before County Staff and the Town with respect to the interlocal agreement is the 5 and 6 cents gas allocation increase, and the County would prefer to deal with this separately.

B. J. W. FRENCH

Mr. French would like for us to keep in mind the benefits of having an expanded regional system with alternative supplies and water. The benefit of a comprehensive unified rate are capital improvements, emergencies, maintenance, expansion, a larger customer base and greater economies of scale; the benefit of the well fields and capital facilities in the public domain as opposed to private profit companies. Participating in the rate making process with local elected government officials is probably preferable to participating in that process with the rate setting body appointed by the Governor.

C. LARRY JOHNSON

Mr. Johnson is Director of Environmental Services for Lee County. He is also vice chairman and a board member and director on the Government Utility Authority. He said he wished to explain to the

Council that he was involved in a negotiation for the purchase of these utilities with Florida Cities and with Avatar. They established that any purchase, particularly of the Lee County portion of the SS, would have to pay for itself and that they would not subsidize any other portion of the purchase. When the pricing was established, it was done purely on a system-by-system analysis on each of the six systems within the different counties that were considered. When those prices were all established separately, they were then added up to get the total price.

D. DAN PARKER

Mr. Parker discussed the littering ordinance. His concern was enforcement. He asked if the public did get involved and gave license plate numbers to the authorities, will they in fact prosecute?

E. NORBERT DEMARS

Mr. Demars, a 22 year resident of Fort Myers Beach, advised that he owned property on Connecticut Street. At a previous meeting he had requested that the Council review the Mound House project with respect to the intent, the funding, and how it would impact the residential neighborhood. He understands that it will take a lot of time before we can put it on our agenda. At the Advisory Council meeting on March 3, he found that they are going full-speed ahead with a plan to develop this property prior to any kind of input before this Council, which is a concern to himself and others in the neighborhood. He was alarmed to find out that this committee is reviewing proposals for meetings, for tours, for capital expenditures. They are discussing improvements and they are planning changes in the shrubbery and agriculture there. They are discussing docks, a marina. They discussed closing on this property sometime in March before the residents of the Town can give input. There is no way that this museum can pay for itself. The startup costs alone will be astronomical. It is incumbent on everyone to stop the purchase of this property until fully aware of what the cost to the taxpayers will be and its impact on the neighborhood of Connecticut Street. There are several residents in the neighborhood who are fully prepared to retain counsel to protect themselves from this government.

V. CONCEPTUAL PRESENTATION OF PLANS FOR C. DREAMS PROPERTY

This project was explained as one of proceeding on the old C Dreams site in Times Square.

Andrew Conlin, architect, introduced his partner, Chuck Fetterling. They were hired by a gentleman seeking to purchase the property if he can get sufficient floor space for leasable areas. The property is 80 feet wide but only 50 feet deep. The overlay program in Times Square does not allow a variance from the rear property line, which would take up 50% of this property. They are attempting to get approval to build back towards the rear property line. Mr. Carmen displayed the sketches that they originally presented to Marsha Segal-George and to John Gucciardo, which really weren't conducive to the area. To bring it into some kind of aesthetic value, they came up with another design that pleased the owner and that they hope will please everyone on the Council.

The owner is expecting to develop 3800 square feet on the first floor and approximately 3000 square feet on the second floor. The first floor would be a retail area and the second floor would be a restaurant. This is the only way the owner can pay for this property.

Asked for the identity of the potential buyer by Anita Cereceda, Mr. Conlin said his name was Sonny Aserat from Panama City, Florida. Mr. Aserat has businesses in Panama City that are similar in nature to what he is planning to do here. His retail business will be bathing suits and souvenirs. He wants his restaurant upstairs to be first class with a view of the ocean at the back.

Ultimately they would need a rear setback variance and they may need a parking variance. This is the first property in the Square that's looking to tear down the existing building and rebuild something else.

Dan Hughes advised that conceptually he personally liked the building. However, the client should enter into a contract on a contingent basis pending approval by the LPA and the Town Council. Public hearings would have to be held on both levels.

John Mulholland stated that he agreed with Councilman Hughes that the conception sounds very good, but he wonders how they are going to get around the parking problem. Mr. Conlin advised that he would answer our questions.

Garr Reynolds asked Marsha Segal-George if this means she would be backing off the sidewalk idea, because this should be set back 25 feet. Marsha said she was referring to the rear setback. Under the overlay you can come out to the property lines on the side and the front, but there is a 25-foot

rear setback. The issue is that they want to take their building to all the property lines, and to do that they would have to get a variance. Mr. Reynolds said that it seemed to him that it would be better to let them set back a little bit. If you don't develop to the back of these lots through there, you're going to have some landlocked pieces of land that won't be worth anything. Marsha explained that that's why you have the rear setback, so that you don't landlock them. Right now they're trying to make some arrangements for garbage in the back of those buildings.

Anita Cereceda felt that the presentation was beautiful but too upscale for the area. The community has been promised that the charm of Fort Myers Beach would be maintained.

Stated was that believe it or not that particular property was identified in one of the vision plans as being a targeted property for the Town to purchase. But the owner hasn't come forward to donate it to the Town and no one else has stepped up with the necessary funds to purchase it.

John Mulholland stated that it seems they are trying to put too much on a limited piece of property. Remarks have been made about the blank wall facing our major thoroughfare coming into town. He would like the building better if it were scaled back.

If we were to give a variance on the setback, that might impact the easements that would be in that block. Consideration could be given to a variance for the entire block. Making a decision not to use any rear access or any rear easement would help the development of the whole block.

Ray Murphy stated that although that wasn't a rousing endorsement, he thinks they have some support here for the redevelopment of that piece of property. He thanked the architects for coming out tonight.

VI. CONSENT AGENDA:

John Mulholland asked to pull items D and F.

Dan Hughes asked to pull items A, B, C and E, then withdrew C.

Garr Reynolds asked to pull item C.

A. Approval of Minutes: February 22, 1999 and February 25, 1999

MOTION: Made by Dan Hughes and seconded by Anita Cereceda that we approve the minutes of February 25. Passed unanimously.

Discussion:

Dan Hughes stated that we may recall that at the February 8 meeting we had a resolution. At the February 22 meeting, he asked that the minutes be amended to include the resolution of February 8 in full and he thought that this had been done. The resolution, however, still does not appear anywhere in our minutes. Marsha Segal-George said that the resolution had been attached to the original minutes on February 8. Dan Hughes stated that he had a problem with doing it that way and he does not have a copy of that resolution. Marsha advised that she would make sure that he gets a copy of the February 8 minutes with the resolution attached to it. Garr Reynolds stated that when making a correction or an amendment to minutes, this should be mentioned as such in the minutes of the very next meeting.

MOTION: Made by Dan Hughes and seconded by Anita Cereceda that we approve the minutes of February 22 with the correction noted. Passed unanimously.

B. Approval of Financial Reports for March

Dan Hughes stated that on the land lease we are incurring \$1500 per month that wasn't budgeted and we will have a deficit all year on that item. Is there any reason for this? He was told that at the time that budget was drawn there was no anticipated lease. It will be amended at some point.

MOTION: Made by Dan Hughes and seconded by Anita Cereceda that we approve the financial report as presented. Passed unanimously.

C. Resolution to set a public hearing for petition to vacate -- Lighthouse Island Resort has

filed a p

Garr Reynolds said that he had real misgivings about this issue. He wonders about the policy that the Town is going to come up with to establish a procedure for dealing with this kind of problem. He would like to see the space utilized as some kind of metered or open parking. Right now the street is being totally used by that business.

Attorney Roosa advised that all this resolution does is set a hearing.

MOTION: Made by John Mulholland and seconded by Dan Hughes that we approve Consent Agenda C. Passed unanimously.

D. Resolution approving request for temporary parking by Norman Primeau

John Mulholland stated that under the conditions on the second page, he does not see any indication of a wall nor any indication of bumpers. He doesn't think that river rock and gravel have been specified. He thinks these conditions are very very vague and he would like them corrected.

Ms. Cereceda advised Mr. Mulholland that all of those were discussed at length during the public hearing and condition 1 does say that it should be gravel. The proposal made to us by Mrs. Grady on behalf of Mr. Primeau requested that they only have to put gravel in portions of the parking lot and we said no, it had to be the entire parking lot. We placed the bumpers only along the Estero Boulevard portion of the lot. Mr. Mulholland felt that Victor Dover and Bill Spikowski took pains to point out that rather than gravel it should be river rock, which allows the water to permeate and clear up that drainage problem. He also understood that the wall was going to go along Santos to protect the residents of that area from the commercial intrusion of the parking lot. He was told that was correct and that the staff had also recommended this.

Dick Roosa pointed out that it was not appropriate to discuss the merits of this resolution that has been adopted.

Garr Reynolds stated that this is the first time the resolution has been seen in print and we don't have a chance to make corrections or make suggestions. He'd like to discuss it. He was told that the resolution accurately reflects what was voted on and we are not going to change that vote here this evening.

MOTION: Made by Ray Murphy and seconded by Anita Cereceda that we approve Consent Agenda item D. Passed with one nay vote.

E. Resolution denying request to rezone by Thomas Piascik

MOTION: Made by Dan Hughes and seconded by Anita Cereceda that we approve Consent Agenda item E, the resolution denying the request to rezone by Thomas Piascik. Passed unanimously.

F. Resolution recognizing the nonconformity of the docking facility at Dock of the Bay and denying request to expand the dock.

John Mulholland said that he had a question about the Town's right-of-way, which is not discussed in the resolution. Marsha Segal-George advised that they are still trying to get those surveys that were done many years ago. She doesn't know if that street is a dedicated bay access. Attorney Roosa stated that even if it were, the resolution wouldn't vacate the resolution.

MOTION: Made by Anita Cereceda and seconded by Garr Reynolds that we approve Consent Agenda item F. Passed unanimously.

VII. Administrative Agenda

A. Discussion of Lee County Littering Ordinance

John Mulholland asked how the littering ordinance would be enforced. John Gucciardo suggested that we defer this item until the Public Safety Task Force has had a chance to review it at their meeting tomorrow night. It falls under the purview of the PSTF because it was the third highest rated issue as a result of their survey. We will be speaking with the County about this on the 23rd. Everyone agreed

that a postponement would be fine.

B. Discussion of possible franchise agreement with Lee County for water service

Dick Roosa advised that we had before us an interlocal agreement for portable water service and waste water treatment service. This agreement was negotiated as part of a potential settlement of the lawsuit that is filed by the Town of Fort Myers Beach v. Lee County. This afternoon there was a motion hearing to accelerate the calendar so as to allow for this to be heard on March 23. Our attorney, Tom McClelland, would like to have a meeting with the Town Manager and all the Council members in private to discuss the pending litigation and in order to do that, there is a requirement that we announce that meeting at this meeting. There will be a court reporter present to take the record and it will not be disclosed until after the settlement of the lawsuit. This is the first time that the Town has done this. The next possible date would be next Monday night from one-half hour to 45 minutes. The meeting would be composed of Richard Roosa as the Town Attorney and Thomas P. McClelland as Town Attorney, Marsha Segal-George as the Manager, Mayor Ray Murphy, Vice Mayor John Mulholland and Council members Anita Cereceda, Garr Reynolds and Dan Hughes and a court reporter. Attorney McClelland would

discuss strategies with us and the proposed settlement. Dick Roosa said he'd like to have a special meeting following the aforementioned meeting so that the Council could take official action if so desired.

Asked if the meeting would be an executive session, Dick Roosa stated it was going to be an executive session to discuss pending litigation. It will exclude the public excepting for those that he has named.

Mrs. Segal-George advised that she had attended the motion hearing this afternoon and had been impressed with the County's guy from Tallahassee and Mr. Renard. They're basically going to argue that they don't particularly need our consent. They told Judge Rosman that it's a legal issue and pretty cut and dried.

MOTION: Made by Anita Cereceda and seconded by Garr Reynolds that we schedule an executive session of the Town Council on Monday, March 22, at 5:00 P.M. at Town Hall for the specific purpose of settling litigation with the County. It will be followed by a special meeting wherein the Council can take official action if so desired. Passed unanimously.

Dick Roosa asked to have distributed to himself and the Council members ahead of time for the executive session all the motions and pleadings in this case, a copy of today's court order and whatever else we might think relevant.

C. Discussion of possible amendments to the Animal Control Ordinance.

John Mulholland advised that this item had been put on the agenda at his request. Presently, dogs are allowed on the beach under V.O.I.C.E command. He would like for this change to have dogs on a leash at the beach accesses and on the beach and the person walking the dog or other pet have some visible means of picking up any droppings.

When referring to the beach, we are talking about from the mean tide line seaward.

VIII. COUNCIL MEMBERS ITEMS AND REPORTS

Anita Cereceda apologized for not attending the Traffic meeting this week, but she was in Naples speaking to the Collier County League of Women Voters. They see Fort Myers Beach as a good example of incorporation as opposed to their example of Marco Island. They were very enthusiastic about our success and it was wonderful to talk to them.

Garr Reynolds stated that he thought the Shrimp Festival went off very nicely and the day couldn't have been more perfect.

John Mulholland advised he had had a total hip replacement on March 3 and will be on a walker until April 21.

Dan Hughes stated he is getting a lot of inquiries regarding the Mound House. There is a lot of confusion about the scope of authority of the committee and at what point the Council has to make a decision on these issues. Anita Cereceda said that she and the Mayor had spoken to a group of Chamber people and a source of tremendous confusion in the community is that people don't really know how things happen. She advised the Chamber that she would write something explaining just what is

happening with the Mound House and who has ultimate authority. There is also a lot of confusion about what Marsha does. Mr. DeMars felt that Marsha tells this committee what to do when, in fact, it's the opposite. We tell Marsha what to do and then Marsha implements that. There was that same confusion with the Chamber executives, which speaks well to the talents of our Town Manager but not to how our government works. For instance, to them the sign ordinance was passed overnight although we had been working on it for two years.

Marsha Segal-George said she is trying to set up a workshop for CELCAB in April. It will go through a whole number of these issues. The Connecticut folks have tried to make CELCAB, which is only an advisory group, answerable to them. It now looks like it will probably be the end of April or May before we'll actually be able to close on the Mound House. There's no hurry as nothing is happening. Our next concern would be the rezoning of the site and of course that can't occur without public notice and until after we actually close. The problem is trying to get CELCAB up and running and understanding what their mission is before they deal with Connecticut Street, and the workshop will probably help CELCAB get a good understanding of what they're supposed to do.

Mayor Murphy stated that he's has heard about enough from the letter writers about the holiday festivities at the Mound House, which seems to be at the top of their list. This is no way for them to make points with us.

Garr Reynolds said he felt that the concerns of the Connecticut Street group were legitimate ones.

Ray Murphy advised they had received a flyer last week regarding an invitation to a conflict resolution seminar that is being sponsored by Florida Gulf Coast University. He would like to attend if this is okay with the rest of the Council. There were no objections. He also reported that Anita Cereceda had given him the paperwork for Leadership Lee County and he'd like to apply for it this year.

Ray Murphy gave notice that the St. Patrick Day's parade will start at 10:30 A.M. at Santini Plaza and he gave the route. The Council should meet there at 9:30. Father Goggins will have a matinee version of his St. Patrick's Day show and a \$10 donation will be requested.

IX. TOWN MANAGER'S ITEMS

Marsha Segal-George advised that in talking to Mr. McClelland today at the hearing, he requested that she ask the Council to authorize paying ten more hours of Consultant Mike Burton's time.

Discussion:

Will the ten additional hours be prorated at the same hourly rate? Yes.

MOTION: Made by Anita Cereceda and seconded by John Mulholland that we authorize paying Mike Burton for ten more hours of his time.
Passed unanimously.

Marsha also stated that Ron Himmelman had met with the folks on Palmetto Street with regards to the paving and the drainage work. Ron reported that they were at the engineering stage and when the price quotes came in, they were a little bit more than anticipated. They would like to have a workshop with the Council as soon as possible. Ray Murphy suggested that the Palmetto Street representatives write down whatever their proposals are to us and we could put this on an agenda for some evening.

X. TOWN ATTORNEY'S ITEMS

Dick Roosa recalled that sometime ago we had a special permit for beer and wine for a restaurant on Estero Boulevard. The court has ruled that there was not competent substantial evidence to require them to limit their sales to 50% of alcohol sales and that this condition will be stricken by the court. One of the things we might consider when adopting land use regulations is in our definition of a restaurant to define a restaurant as having 50% or more in food sales.

XI. PUBLIC COMMENT

A. ROBBIE ROBINSON

Mr. Robinson stated that their Palmetto Street road is the trashiest and worst road on the Beach. Each one of the

XII. ADJOURNMENT

The meeting was adjourned at 8:21 P.M.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

items for action from the meeting of March 15, 1999

1. Marsha advised that she would make sure that Dan Hughes gets a copy of the February 8 minutes
2. Set a public hearing on April 12 at 9:00 A.M. with respect to a petition to vacate a portion of 4th
3. John Gucciardo suggested that we defer a discussion of the littering ordinance until the Public
4. Schedule an executive session of the Town Council on Monday, March 22, at 5:00 P.M. at Town Hall with respect to an interlocal agreement for portable water service and waste water treatment service. This agreement was negotiated as part of a potential settlement of the lawsuit that is filed by the ahead of time for the executive session all the motions and pleadings in this case, a copy of today's court order and whatever else we might think relevant.
5. Anita Cereceda has advised the Chamber that she will write something explaining just what is
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Hours of Minutes of Town Council 3/15/99

10:15	-	11:00	:45	:45
11:55	-	12:40	:45	1:30
6:55	-	7:15	:20	1:50
6:20	-	7:20	1:00	2:00
10:35	-	12:00	1:25	3:25
4:35	-	5:25	:50	4:15
10:25	-	11:25	1:00	5:15
2:00	-	2:30	:30	5:45