

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

I. CALL TO ORDER

Mayor Ray Murphy opened the meeting on Monday, July 1, 1999, at 3:34 P.M.
Present at the meeting were: Mayor Ray Murphy, Vice-Mayor John Mulholland; Council members Daniel Hughes, Garr Reynolds and Anita Cereceda. Town Staff present were 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

The invocation was given by the Reverend Ralph Dixon.

IV. PUBLIC COMMENT

A. LOUIS MARRONE

Mr. Marrone suggested that we make a compromise with a developer regarding the number of buildings that they might put up.

B. WILLIAM KINNEY

(Inaudible.)

C. JENNIFER KAESTNER

Mrs. Kaestner spoke against a user fee for the pool and the fact that the pool will only be open during school hours. She does not wish to see an out-of-state corporation make carte blanche decisions regarding the pool.

D. HAROLD HUBER

Mr. Huber of Bay Beach spoke about the Bay Beach situation. He noted that the lines were drawn in the sand for Bay Beach years ago and we should not allow a developer to cross those lines. If a developer is allowed to build a ten-story building in front of him, it will block his view.

V. PROCLAMATION FOR TEENS IN PARTNERSHIP WITH THEIR COMMUNITY

WHEREAS, we consider our teenagers to be an important part of our community, and WHEREAS, the Bay Oaks Advisory Committee and the Lee County Sheriff's Department are joined together to provide ... opportunity for our teenagers, and

WHEREAS, it is deemed appropriate and proper for the Town of Fort Myers Beach to proclaim its support for Teens in Partnership with Their Community,

NOW, THEREFORE, I, Ray Murphy, Mayor of the Town of Fort Myers Beach, do hereby proclaim August 9-12, 1999, as Teens in Partnership with Their Community Week and the Town of Fort Myers Beach, and urge that the citizens of this community recognize and honor our teenagers.

VI. PRESENTATION BY WESCO FOUNTAINS

Jeff Castle gave the presentation and advised that his company had prepared a presentation package at the request of Ron Himmelmann, Assistant Town Manager. He described Wesco Fountains as a well-established company in Florida and a manufacturer specializing in the design, engineering and installation of fountain systems of different types. All their electrical assemblies are UO recognized for safety.

Architectural water features are designed in two basic categories: either aerated white water or clear water. Mr. Castle explained the difference between the two categories. Cost: \$25,000 for a specialized equipment package. Installation cost: \$35,000.

Photos are included in the package. The names of establishments using their fountains were given.

Mr. Castle answered questions put to him, several of which are the following:

Q. Does your firm do repair and maintenance work?

A. Yes.

Q. Do you have a rough idea of what the cost would be for the Town to maintain the fountain?

A. Typical monthly maintenance would be similar to the maintenance of a residential swimming pool.

Q. How extensive is the warranty?

A. One year on many of the components. We stand behind everything we sell.

Q. Where would the money come from for the fountain?

A. According to Mrs. Segal-George, the tourism money that we receive is site specific. Attorney Roosa noted that there is \$170,000 left to be spent in Times Square.

Q. Was there any other location that you felt could accommodate such a structure?

A. Possibly towards the pier, but there was concern about traffic flow.

Discussion:

Councilwoman Anita Cereceda said she was uncomfortable with the location of the fountain and with us making a decision that's going to add \$12,000 to the overall maintenance in Times Square without discussing it with the Times Square merchants, who will be paying for it. She's uncomfortable with spending \$60,000 for a fountain in front of Top O' the Mast, who have been anything but cooperative. Councilman Garr Reynolds was also uncomfortable with the decision. Vice Mayor John Mulholland felt that other places on the Island needed the money that would be spent on the fountain. Councilman Dan Hughes reminded us that a motion had been unanimously passed on June 7 to go forward with the fountain. Town Manager Segal-George advised that the motion had been to look into obtaining a water fountain. She would suggest we wait until we have information on water fountains and associated costs before making a decision.

Mayor Ray Murphy stated that anything we put in Times Square would have maintenance involved. He is open to suggestions about the location. Garr Reynolds said he had no problem with the location, which would be where we would not block off access by emergency vehicles.

Anita Cereceda said she would like to make a motion to table the discussion of the fountain until some future date as she doesn't like the proposal.

Ron Himmelmann explained why he had chosen the Wesco Fountain Company. Other companies he had called said that this project was beyond their scope.

MOTION: Made by Anita Cereceda and seconded by Dan Hughes to table the discussion of the fountain. Passed unanimously.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH REFERENCE TO BAY BEACH

Mayor Murphy thanked Vice Mayor Mulholland for filling in for him at the last meeting.

Anita Cereceda asked if Mayor Murphy would be voting on this issue and Attorney Roosa stated that it's not unusual for judges to have to make decisions based upon the record. When there is testimony presented and it is conflicting testimony and the credibility of the witnesses is at issue, then the attendance at the meeting could be important.

MOTION: To approve the resolution by John Mulholland and seconded by Anita Cereceda. Motion passed unanimously.

Discussion:

Anita Cereceda expressed appreciation for the work of David LaCroix and Richard Roosa in drafting this resolution, stating that it was very clear, very precise and unemotional. This was echoed by Dan Hughes.

David LaCroix was asked to make comments, which he did.

Dan Hughes stated that the most appropriate way to deal with re-development is for the

town to come up with a master concept plan for a planned development. Mr. Hughes asked at what point in time would Mr. LaCroix recommend that the town do this? Is there any reason why we shouldn't do this immediately? Mr. LaCroix commented that it would be a much better product if the town would do that.

Attorney Roosa advised that great pains had been taken to assure that the findings in this resolution are supported by evidence and that is why the document is longer than we're accustomed to reading.

Mr. Hughes stated that this addresses all of the issues, and is well written. He believes that it is fair and doesn't believe that we have taken away any alleged vested rights, terms of the number of units, ratios and so forth. He believes that height issue is something we could deal with in the future.

Mayor Murphy read the resolution interpreting the town's zoning regulation as applied to the Bay Beach Development section 34-208.

Mr. Hughes stated that he hoped that the Council, Stardial and their counsel will work with our attorney to implement this resolution with a new proposal for a planned development and that they work together to get this moving so that it can be brought back to the town council this fall.

VIII. PUBLIC HEARING: ROAD VACATION AT FOURTH STREET:

Those persons giving testimony in this case were sworn in.

Bill Van Duzer explained the case and thanked us for our consideration and asked for our approval of the vacation of this property. He showed drawings of the area for which a vacation has been requested and the properties that would be exchanged for it. He answered the questions that were put to him.

Councilwoman Anita Cereceda stated that she had questioned Bill Van Duzer at the last hearing whether option 3, which we are discussing today, was Bill Van Duzer's idea or Bill Spikowski's idea. She learned that it had been initiated by Mr. Van Duzer and was proposed by Bill Spikowski. Garr Reynolds felt that we would be giving away more square feet than we would be receiving. Attorney Roosa asked that we not think in terms of exchange of property. The law of the State of Florida is that when a public parcel no longer serves a public purpose, that at the discretion of the Council it can be vacated and it can go only to the abutting property owners. The issue for this Council is a public purpose being served by the continued use of this property as a right-of-way. There is no longer a need for the movement of traffic in this area because the only people who are going to be using it are people who will be going onto the property of the abutting property owner.

Attorney Beverly Grady, who represents the property owner, gave input. She advised that they will be able to provide to the Town warranty deeds for parcels 1, 2 and 3. They would also provide to the Town a temporary easement for parcel A. At a separate hearing in September they would be requesting a vacation of a portion of Fifth Street and requesting a vacation of parcel G. If that is approved, they would then be conveying the small triangular parcel on Fifth Street and providing to the Town a sidewalk. Buildings would be permitted to be built over the sidewalk easement. They would be looking for the Town's approval of the architectural concept.

The actions Mrs. Grady would like for us to recognize are:

1. The vacation of parcel A.
2. The recognition of the deeds that they have, which can be signed and delivered to the Town today.
3. They would also be able to prepare and perhaps deliver the easement, which the Town Attorney would hold in escrow. The purpose of that is to permit the status quo because there is an existing building that they are not ready to tear down.

It was pointed out that there were some utility and quasi-utility companies that have easements and aerial rights on parcel 8. It appears that the building in the drawing that will now face on Fifth will cross over that area that's being vacated. Asked was how do you get rid of those easements? The response was that Mr. Kolar has already met with the utility company and there is an understanding that those easements that will be recorded after the vacation will be terminated and relocated.

Anita Cereceda and Mayor Murphy advised of people they had spoken to regarding this matter.

According to Attorney Roosa, we must consider the following before we can consider vacating the property:

1. Is this property important to the public for ingress and egress?
2. Is this property being used for public parking?

The applicant has agreed to allow for a temporary easement for public parking as it is today until such time that they have removed their building and the property will become available for a parking area. At the time that we would give up our temporary easement for parking on this property, they would give up their temporary easement for the existing structures on the parcel of land.

Mayor Murphy suggested that we take a ten-minute break while Attorney Roosa crafts a resolution that we can look at.

B R E A K

Attorney Roosa announced that we have before us a resolution which will vacate the property. On the second page it says that the Town reserves an easement for public parking. The applicant has prepared warranty deeds on the property that will be used for the public parking. If that property is subject to an easement for an existing structure, there is going to be a document prepared that will release that easement which will allow us to put in our parking. At the same time we will release this easement. When we lose our easement for public parking on Fifth Street, then we will have the public parking available on the property that we will have title to.

The applicant will provide title insurance, the amount of the insurance to be determined by the value of the property as determined by the Property Appraiser's office. The title commitment, the deed and the proposed lease of the applicant have all been reviewed and found to be in order.

Attorney Grady advised that they had never adopted the Lee County administrative code and, therefore, that needs to be struck.

MOTION: Made by Garr Reynolds to deny the request to vacate Fourth Street without equal space in another location on the owner's property. Motion failed for lack of a second.

The resolution of the Town Council of the Town of Fort Myers Beach was read aloud by Mayor Murphy:

RESOLUTION TO VACATE, CASE NO. 98-09-227 103R

WHEREAS, Petitioner Lighthouse Island Resort, Inc., in accordance with Florida Statute Chapter ... of the Town Land Development Code filed a petition to vacate, abandon, close and discontinue the public interest in the right-of-way or portion of the right-of-way legally described in the attached Exhibit A, and

WHEREAS, the Town Council of Fort Myers Beach, Florida, held a public hearing concerning the petition to vacate on the 1st of July, 1999, and

WHEREAS, a legally sufficient affidavit of publication regarding the notice of public hearing for this petition to vacate was entered into the minutes of the Town Council meeting and a copy of said affidavit is attached as Exhibit C, and

WHEREAS, notice concerning the intent of the petition to vacate was provided in accordance with the Town Land Development Code, and

WHEREAS, it appears that vacating, abandoning, closing or discontinuing the subject right-of-way or portion of right-of-way is in the best interest of the public, at the most the public's health, safety and welfare, without invading or violating the individual property rights, and

WHEREAS, the letters of review and recommendation provided by the various governmental and ... indicate granting petitioner's request is appropriate and in accordance

with Florida Statute Chapter 177,

NOW, THEREFORE, be it resolved by the Town Council of Fort Myers Beach as follows:

1. Petition to Vacate No. 98-09-227.03 is hereby granted.
2. The public's interest in the right-of-way or portion of right-of-way as described in Exhibit A and graphically depicted in Exhibit B is hereby vacated, abandoned, closed and discontinued and the Town reserves an easement for public parking.
3. The notice of resolution of adoption will be published one time within 30 days of adoption in a newspaper of general circulation. An affidavit of publication for the notice of resolution of adoption will be attached to this resolution as Exhibit D.
4. This resolution will become effective upon the recording of a fully executed resolution, including all exhibits referred to above in the public records of Lee County, Florida.

MOTION: Made by Dan Hughes and seconded by Garr Reynolds to approve adoption of the resolution. Motion carries with Garr Reynolds dissenting.

MOTION: Made by Dan Hughes and seconded by Anita Cereceda to authorize and direct the Town Attorney to release the easement for public parking referred to in paragraph 2 of the resolution just adopted upon receipt contemporaneously of an executed release of easement on the property that is to be deeded to the Town. Motion carries with one nay vote from Garr Reynolds.

IX. CONSENT AGENDA

A. Minutes of June 21, 1999

Dan Hughes asked to pull these minutes. On page 4 the motion refers to the resolution and he had referred to the resolution presented by Staff. Dan Hughes also referred to the motion on page 7 of the minutes. He would like to show that the resolution was prepared by the Staff. On page 7 just preceding the public input, it says that Dan Hughes noted that on pages 1 and 2 there would be some deviations and conditions. He was referring to pages I and II on the applicant's CPD master plan. On page 13, the last sentence under "H" should read that Dan Hughes requested a power of attorney to research this matter.

Garr Reynolds said that he felt that the resolution that was adopted should be attached to the minutes.

B. Minutes of June 7, 1999.

MOTION: Made by Garr Reynolds and seconded by Anita Cereceda to approve the minutes of June 7, 1999. Passed unanimously.

C. Minutes of June 14, 1999.

MOTION: Made by Garr Reynolds and seconded by Anita Cereceda to approve the minutes of June 14, 1999. Passed unanimously.

X. ADMINISTRATIVE AGENDA

A. Public Hearing on the ordinance to establish uniformity in enforcement.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH VIOLATIONS ORDINANCE PROVIDING AUTHORITY, GENERAL PENALTY, PUBLIC NUISANCE, REVOCATION OF A LICENSE, SEVERABILITY, CONFLICTS AND EFFECTIVE DATE.

There was no public input.

MOTION: Made by John Mulholland and seconded by Anita Cereceda to approve the ordinance to establish uniformity in enforcement. Passed unanimously.

B. Public Hearing on the MSBU maintenance ordinance

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH TIMES SQUARE MSBU PROVIDING DISTRICT NAME, BOUNDARY AND SIZE AUTHORIZATION OF THE USE OF SPECIAL ASSESSMENTS, DESIGNATION OF THE BOARD, ADVISORY COUNCIL, ADVISORY COUNCIL MEMBERS' TERMS AND VACANCIES, ADVISORY COUNCIL FORFEITURE OF OFFICE, ADVISORY COUNCIL COMPENSATION OF MEMBERS, ADVISORY COUNCIL ELECTION OF OFFICERS, ADVISORY COUNCIL DUTIES OF OFFICERS, ADVISORY COUNCIL CLERK, RULES AND PROCEDURES, SEVERABILITY, CONFLICTS AND EFFECTIVE DATE.

There was no public input.

Dan Hughes pointed out that there had been concerns about some language. He has reviewed this and thinks it's quite clear now that these procedural aspects apply to the Advisory Council as distinguished from the Town Board of Directors sitting as Town Council and he therefore moves for the adoption of this ordinance.

MOTION: Made by Dan Hughes and seconded by Garr Reynolds to adopt the Town of Fort Myers Beach Times Square MSBU Ordinance. Passed unanimously.

C. Public Hearing on the charter amendment ordinance

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH PROPOSING AMENDMENTS TO THE CHARTER SUBJECT TO REFERENDUM, PROVIDING AUTHORITY, PROPOSED AMENDMENT ELECTIONS, PROPOSED AMENDMENT COMMENCEMENT OF TERMS, PROPOSED AMENDMENT MULTIPLE CANDIDATES, SEVERABILITY, REPEALING CLAUSE AND REFERENDUM, EFFECTIVE DATE.

Mayor Murphy asked if we wanted to have this on the referendum this fall in light of the fact that the County is not going to have their referendum item with regards to the sales tax on the ballot this fall. Had we tagged on with their referendum this fall, our expense would be zero. Anita Cereceda asked if we could move forward with it and put it on next year's election. Attorney Roosa advised that the adoption of this ordinance would not necessarily put it on the next referendum. There would be a resolution. This would then just be pending the next election. He thinks there is going to be an election in March. In any event, as soon as we know that there is going to be an election, a resolution would be brought to us and set down for the next election. No extra cost would be required that way.

There was no public input.

MOTION: Made by Dan Hughes and seconded by Anita Cereceda to adopt the Charter Amendment Ordinance, pointing out that the change in the ordinance as presented this evening differs from the ones in the prior times that this was on the agenda in that the primary instead of being two months prior to the general election is five weeks prior to the general election. Passed unanimously.

D. RECEIPT OF BUDGET MESSAGE AND PUBLIC HEARING TO SET TENTATIVE MILLAGE

Marsha Segal-George advised Mayor Murphy that the Charter requires that the Town Manager delivers a draft budget to him, and she has. This is our fourth budget. The way that the Council has handled it in the past is that it is put it on as an item on every agenda until the budget is adopted. In this way anyone who wants to comment on it can. Copies of this draft budget are made available to anyone in the Town who would like one. The only thing required for action tonight is for the Council to set the tentative millage rate. For the fourth consecutive year we are recommending the same millage rate, or 1.0961, as when the Town came into existence.

There was no public input.

Mayor Murphy stated that he had read the budget and would like to compliment the staff once again on a fine document. Mentioned in the beginning of the document is that the whole purpose of incorporation was to give local people representation here on the island, and we have seen that demonstrated again this evening with our residents coming in. That's what makes it all worthwhile.

Dan Hughes said he would like to concur with Mayor Murphy's statement. He particularly thinks that the budget cover letter was an excellent summary of not only the history, but the current situation and the budget itself.

Anita Cereceda advised that she agreed with everyone's comments. However, when we come back in the fall she would like to see us schedule a workshop, maybe even two, after we have had input from the public, to discuss things such as Main Street and what the future of that particular entity may or may not be. We could also discuss other line items or pockets that we may have, going through them step by step.

Town Manager Segal-George advised that the way things are set up right now we'll have a budget hearing on September 13 and another on September 27. She asked if we would want to do a workshop in between those two dates or if we wanted to do it in advance of our first public hearing. She was also reminded that there would be a regular Town Council meeting on August 30 and there would be an opportunity at that point for public input. The Town Manager liked this idea and stated we could get public input on the 30th and then have our first public hearing on September 13. It would give us an opportunity to address any concerns that were brought up. At our final hearing we could have the kinks worked out.

John Gucciardo felt that the workshop would need to be within a day or two of the September 13 meeting. This is because for any changes that came out of that, he would have to have numbers balanced and plugged in by the middle of the next week so that our package would be ready on the 27th.

Dan Hughes said he would just ask if there were any reason why we can't do this at our regular Town Council meeting and why Anita felt that we needed a workshop. She responded this was because it would be a more informal conversation with community involvement about the formulation of the budget, as opposed to people just coming in and expecting us to take some action on it. We may get no input. Garr Reynolds felt this was a good idea. John Mulholland agreed with Anita on the dates.

Anita Cereceda felt that there would be a reaction to the utility tax coming up again, to streetscaping, beach renourishment, and the pool. There are big-ticket items this time that we haven't had in the past. It's a question of not just where the funds will come from but also how they will be allocated.

Dan Hughes felt that historically, workshops have been poorly attended while Town Council meetings have been very well attended and he personally would rather spend the time at a Town Council meeting than at a workshop.

Anita Cereceda suggested a combined Council meeting and workshop.

Town Manager Segal-George advised that we must have a budget hearing in the evening, but we could start earlier in the afternoon of the 13th and have a discussion.

It was decided to set the workshop on September 16 at 6:30 p.m. The public hearings will be September 13 and 27.

MOTION: Made by Garr Reynolds and seconded by John Mulholland to keep the millage rate at 1.0961. Passed unanimously.

E. DISCUSSION OF THE DRAFT SIGN ORDINANCE

Town Manager Segal-George advised that this was the sign ordinance as passed by the LPA and is a draft with the changes in bold type and the deletions shown as cross outs. There is a new section dealing with landmarks and/or historical signs. She would request that the Council send this to the first reading on August 30.

Anita Cereceda advised that a reporter at FOX News had telephoned stating they had received several calls about the Town adopting the sign ordinance with no consideration of the merchants, etc. She had assured them that that wasn't the case and had also assured them that the LPA has had this for two months now. Marsha Segal-George noted that the LPA conducted four meetings on this ordinance with very little input. They had addressed every single one of those changes and had had discussions on all of them. At their last public hearing only three people came.

John Mulholland also remarked about the amount of work that went into the sign ordinance and that he took exception to remarks by people who said we were ramming

something through.

F. DRAFT DISCUSSION FRONT YARD PARKING: FIRST READING ON AUGUST

30.

Dan Hughes noted that apparently Mr. Roosa has concluded that this will be part of the land development code and must, therefore, be referred for public hearing by the LPA. He was hoping that it could just be an amendment to Chapter 93 which deals with parking.

Attorney Roosa advised that the Charter provides that any Council member can introduce an ordinance and so this does not require a vote of the Council for the introduction phase.

It was determined that it was Dan's prerogative whether this goes forward or not.

Dan Hughes stated that he felt this should have an opportunity to be run by the LPA.

XI. COUNCIL MEMBER ITEMS AND REPORTS

Vice President Mulholland thanked Marsha Segal-George and the rest of the Staff for the excellent job done on the budget and stated that it will be an excellent planning tool for us to work with.

Mr. Mulholland advised that Jean Mathews, Director of Main Street, had informed him that she will be unable to provide any details of how the Town's contributions to the concerts and socials were spent. This, he said, disappoints him. For the coming budget year he will ask that any dollar requests be fully accounted for, otherwise funding should stop until such accounting is provided. Also, Jean Mathews publicly insulted the LPA with respect to the sign ordinance. He stands behind his colleagues in the LPA and calls for an apology to be given by Ms. Mathews.

Also reported by John Mulholland was that the Coastal Advisory Committee had a meeting on June 28, and a Lee County spokesman indicated that the County would have trouble coming up with their share of the funding needed for beach renourishment. John Gucciardo had set up a meeting with Elaine McLaughlin of TDC to discuss the TDC dollars and how they might be used for our renourishment, and Mr. Mulholland said he will keep us informed on that.

Mr. Mulholland advised that the Marine Resources Task Force had to cancel a meeting for the first time because it lacked a quorum. He had planned to discuss at last night's meeting that the Southwest Regional Harbor Board has not only pledged their support but had also contacted him and he really welcomes their input. MRTF's next meeting is scheduled for July 14.

At our last meeting, Mr. Mulholland stated, he had asked Attorney Roosa to look into a policy that the Town Staff might use for requests where documentation is needed. Mr. Roosa informed him that his request really wasn't in accordance with state law.

Dan Hughes asked Attorney Roosa if he had any information regarding settlement of the Avatar matter. Mr. Roosa advised he had talked to the County Attorney's office and they're still trying to get dates when they can meet.

Dan Hughes said he would like to congratulate the Governor and his cabinet for taking the right step on the Sahdev property. They were no doubt swayed in their decision by our emissaries: Mayor Murphy, Councilman Mulholland and Councilwoman Cereceda.

Anita Cereceda remarked that she had been very disappointed in the meeting she had attended yesterday, which was the Convocation on Transportation Issues for Southwest Florida. There was a lot of discussion regarding why Southwest Florida doesn't have any political clout in Tallahassee; why we don't seem to be able to get anything done. There were some good issues raised. The meeting was interesting but it didn't seem to go anywhere.

The trip to Tallahassee, Ms. Cereceda stated, was very interesting and it did go somewhere. Governor Bush ran a very friendly meeting, and the nicest part of the meeting was the decision to put the Sahdev property into eminent domain.

Garr Reynolds reported having received a letter regarding parking in front of Jay's Hardware, which is evidently a problem. He had also received a letter from Bob Gaydos who gave us a good presentation regarding his objection to the Town giving \$15,000 for the fireworks. If Mr. Gaydos feels that this should be a Council item, he can discuss it with the Town Manager, and if we need to go in that direction, Mr. Reynolds said that he would be glad to bring it back for discussion. He feels that we should respond to that request.

Mr. Reynolds also received a letter from a disabled gentleman, Owen Crawfis. Town Manager Segal-George stated that he wants to use his golf cart to travel on the beach on Little

Estero Island and no one's allowed to do that. She was contacted by the Sheriff's Office, who asked her if Mr. Crawfis had special permission from the Town to do that, and she had advised that he didn't. He was asked to leave or they were going to write him a ticket. MRTF has checked into those kinds of issues and she believes that the Beach Pharmacy rents wheelchairs that are beach accessible and appropriate, unlike the golf carts. Garr Reynolds said that Mr. Crawfis had indicated to him that he had traded in his vehicle and had gotten one that would qualify the same as the one used by Turtle Time and the one that the sheriff drives. He seems convinced that through the Federal Disability Act he would have that access. Marsha Segal-George pointed out that the Council has passed an ordinance that prohibits motorized vehicles on the beach except for law enforcement or other recognized organizations like Turtle Time. We would have to change our own law if we want to allow Mr. Crawfis to traverse the island in his golf cart.

Attorney Roosa advised that there is a state law that prohibits vehicle traffic on the beach except that which is necessary for cleanup, repair or public safety and traffic authorized by local or state governments for dune crossovers. Mr. Crawfis is not being denied access to the beach as long as he uses a vehicle with low impact tires. Dan Hughes stated that we needed to respond to Mr. Crawfis and Anita Cereceda suggested directing Attorney Roosa to advise Mr. Crawfis of the necessary steps he must take and to relay our sentiments back to him.

Mayor Murphy stated that he had also attended the Convocation on Transportation yesterday and said he would leave information on the conference for anyone interested to look at. He felt that the results that came out of this conference were very positive and showed that there is a unification of all the different parties in different areas. The group will hopefully meet again in the northern part of the five-county area to discuss more action. What this is all about is getting all the cities and counties in our district unified with our state legislatures and get them behind us in our transportation needs.

Mr. Murphy also advised that he had received several calls from people complimenting Fort Myers Beach on the excellent job they did up in Tallahassee.

XII. POOL RECOMMENDATIONS

Deputy Town Manager John Gucciardo advised that our recommendation is anything but a carte blanche to an outside agency to come in and take over our pool. What we're setting forth in our recommendation is a very basic agreement that covers five points for a one-year period. As set out in the memo, these points are as follows:

1. The Town would collect all income and fees from the membership fees
2. The Town would pay for all the non-labor operational costs.
3. The Town would pay a preset management fee to the operating company.
4. The Town would pay for labor costs up to a predetermined maximum figure, which would depend on the hours of operation and the type of programming.
5. The Town would then split with company revenue generated by programming.

This would be for a one-year period, which John is contemplating to kick in on October 1 or September 1, whenever the pool is opened. In the interim period, the Champion Corporation, the corporation that we're recommending, would agree to work with both Town Staff and the Pool Foundation in order to come up with acceptable membership fee options and programming options. So there is still ample opportunity for dialogue and for decision-making with both Staff and interested citizens. The Champion Corporation not only doesn't have a problem with that, but they actually encouraged that type of system for the next two months.

Mr. Gucciardo said that they also had another option, and that would be to hire a Town employee to serve as an aquatics facility supervisor. They ran ads for both of those options and are more comfortable with the responses they got to hire the outside agency.

Another option was that Champion Corporation also gave them a proposal in which they would act as a consultant if we decided to go with our own employee. But considering the expertise that Staff felt that we could get from this group, they felt that it was better to farm this out, see what happens after a year and then make a decision.

Labor cost figures are slightly higher than those we got from Lee County, but they have given us a high-end scenario wherein a full labor contingency is needed for the full amount of time. This is never the case, however.

Vice Mayor Mulholland thanked Mr. Gucciardo for receiving the above information in writing so that the various options could be studied. He understands that we have flexibility in our choice of costs, hours and programming.

Dan Hughes asked the following questions:

Could we enter into a contract of this nature without competitive bidding? He was told that advertisements had been placed and responses were received.

How did they come to choose Champion? They had the most enthusiastic response to the ad and they also seemed to have the most experience in startup operations.

In the third paragraph of the proposal is the statement "Will pay on a predetermined biweekly schedule a management fee." What is the amount of that management fee? That is \$21,500 yearly.

Is one year the minimum time frame that they would enter into a contract? The idea was to clock the revenues and costs for a year and then go on from there.

Was the management fee the best of all the proposals? Yes.

How about the 15% payback that we would get on programming gross income? The agreement that I'm looking for tonight is just the five concepts. The numbers themselves have not been locked in. We have agreed that we would split to some extent the revenue generated by programming. My recommendation is to go along with that. If we give the service provider a larger percentage than a 50-50 split, I see the benefit in that.

Who determines what the programs could be? In the two-month interim period, the management company would work with us to set those programs. Once they're in place, we would want to turn over to a certain extent control to them because they're running it. However, they also agree that they would work with us to modify them because the community is going to define what those programs should be. Jennifer Kaestner has concerns about some competitive swim programs. They have some ideas about how that could work, but they also want to hear about the community. They have very good contacts in this community but have no preset ideas about when that would be best used at this pool.

Anita Cereceda ascertained that the recommendations were Staff's and not the Pool Foundation's.

Other questions by Councilwoman Cereceda:

All you're asking for is conceptually the notion of a management firm versus a town employee? A management firm with the five points to be critical concepts for the first year of operation. What they faxed to us isn't what we agreed to or are recommending that we agree to.

When is that programming aspect of the pool going to be decided and by whom will it be decided? The two-month interim period is when the service provider will work with Town Staff and the Foundation to come up with programming options. Those options will come in the form of a recommendation that the Council can either take an active part in or not. But I don't have a problem with leaving some blanks and open spaces in programming, because I think that it's important for the community to define that to a certain extent.

Ray Murphy asked if John is just looking for direction in concept this evening and then will later on will come back with a more fine-tuned contract. John advised that the contract would cover the five points. The things that would not be agreed to at this point are what types of programming and to a lesser extent what types of passes and what revenue-generating aspects would be put in place.

John Mulholland advised that he has not received figures yet from the Pool Foundation. It looks like we're going to be operating a pool in September. Where is the input from the Foundation on how we're going to do it and the wherewithal? If this is the only thing we have to go with, do we have a choice? Mr. Gucciardo stated that the Pool Foundation has given input in terms of proposed or projected labor costs and operational costs the best they could, just as he had tried to put some numbers together and just as we got from Lee County early on also. They have not as yet defined their positions or options in terms of different revenue possibilities, but he understands that they will.

Garr Reynolds advised Mr. Mulholland that we did get some information at our last meeting and it outlined four different programs of different intensities and the costs that might be associated with those different programs. He was the only one who commented on this and was surprised that it hadn't been discussed more. He would like to know more specifics.

Ray Murphy feels that the service provider will be looking to the community for input regarding the pool. He'd like to know how we will handle the auditing and financials.

John Gucciardo does not feel that days and times of operation need to be set in the contract and he would recommend against doing so.

The schedule of costs was discussed. Councilman Reynolds stated that basically we've gone from the original cost of operation of \$80,000 to over \$300,000 and so we're standing at around \$225,000.

Councilwoman Cereceda said she'd like to see any agreement of programming percentages left negotiable until the programming is actually set. This was disputed.

Garr Reynolds would not like for this to become a commercial venture. He feels that we should plan for open and free swimming except for special events. We should keep in mind that this is a community pool that is being paid for by the taxpayers on the island.

MOTION: Made by John Mulholland and seconded by Dan Hughes for John Gucciardo to move forward with the contract negotiations. Passed unanimously.

XIII. TOWN MANAGER'S ITEMS

John Gucciardo referred to a notice of the County to enact a resolution having to do with the existing franchise agreement that we operate with the County for the collection and disposal of solid waste. This agreement, which was in effect before we became a town, expires next year and so we will be looking at different options between now and the next fiscal year. The City of Fort Myers is considering pulling out of this agreement. If they do not pull out, the proposed rate increase for taxpayers on the Beach will be approximately 75 cents per year per residential user. If the City does opt out, the County is proposing a .36 mil increase in the general ad valorem. They would offset that with a reduction in the solid waste assessment fee. It becomes an issue for us because since it will be based now on property taxes as opposed to separate assessment, we will in effect be subsidizing areas where the property values maybe aren't as high. John said he thinks it is a little late for us now to think of opting out and starting our own franchise agreement.

XIV. TOWN ATTORNEY'S ITEMS

Attorney Roosa advised that Attorney Grady has submitted to Pamela Houck a revised set of drawings on the Carslake amendment to the CPD. He has reviewed them and they include requirements consistent with the resolution. The reference to the former County resolution has been deleted.

Mr. Roosa also stated that at the last Council meeting he was directed to see what, if anything, could be done to address the burden that's placed upon our small staff whenever we have requests for public documents. He contacted the Florida League of Cities to determine if any other counties or municipalities have adopted any policies or procedures, and there are none. The policy has to be that these are public records and the public has a right to access those records.

Lee County has filed a lawsuit against all taxpayers in order to validate their bond issue for the purchase of the utility system. The Town of Fort Myers Beach is not a party to this litigation. Attorney Roosa said he did some research and found that if a public official is representing the interests of a public body, that the attorney for that public body can represent that public official in pursuit of those interests. He is therefore requesting authority to represent Mayor Murphy in this bond validation proceeding as a taxpayer if we cannot settle this action between now and when that hearing arises in September. But he cannot appear on behalf of the Town because the Town itself is not a party to this litigation.

MOTION: Made by Garr Reynolds and seconded by Anita Cereceda that Attorney Roosa is given authority to represent Mayor Murphy in this bond validation proceeding as a taxpayer. Passed unanimously.

XV. PRESENTATION BY LINDSAY SAMPSON OF LEE COUNTY

Mr. Sampson of the Division of Solid Waste for Lee County was asked to speak. He feels that for all intents and purposes the agreements regarding solid waste assessments and solid waste disposal agreements will continue with the City for the next year. The indication is that at next week's Council meeting, the Mayor will put forth a motion to rescind his notice of termination of assessment and it will be up to the Council to make that decision. The numbers have been worked out, he advised, and he will leave a handout for us to review that gives the economic basis for the proposed solid waste assessment rates, the residential rates in the Town of Fort Myers Beach, and the business assessment.

Mr. Sampson advised that Lee County has purchased Kimmins Recycling and this has been approved by the Justice Department.

XVI. PUBLIC COMMENT

A. JENNIFER KAESTNER

Ms. Kaestner thanked us for the attention that we paid to the pool issue tonight. With reference to the Champion Corporation of Augusta, Georgia, she advised that they would completely control advertising and pay for it, making the pool a tourist attraction, but that it may put those people who live in our community out of business. We're going to be combating with people who want to make a profit every minute that they can and the Beach families won't be able to afford the programs. She urges that we stay on top of this.

XVII. ADJOURNMENT

The meeting was adjourned at 7:37 P.M.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for action from the meeting of, 1999

1. First public hearing on sign ordinance will be August 30.
2. Budget hearings to be held on September 13 and September 27
3. There will be a budget workshop on September 16 at 6:30 p.m.
4. Mr. Reynolds said that he would be glad to bring back for discussion Bob Gaydos' request regarding his objection to the Town giving \$15,000 for the fireworks.
5. Anita Cereceda suggested directing Attorney Roosa to advise Mr. Owen Crawfis of the necessary steps he must take before using a motorized vehicle on the beach and to relay our sentiments back to him.
6. Attorney Roosa will represent Mayor Murphy in the bond validation proceeding as a taxpayer if we cannot settle this action between now and when that hearing arises in September.
7. A Lee County spokesman indicated that the County would have trouble coming up with their share of the funding needed for beach renourishment. Mr. Mulholland said he would keep us informed about that.
8. The indication is that at next week's Council meeting, the Mayor will put forth a motion to rescind his notice of termination of assessment and it will be up to the Council to make that decision.