

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
SEPTEMBER 27, 1999  
NationsBank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I. CALL TO ORDER**

Vice Mayor John Mulholland opened the meeting on Thursday, September 27, 1999, at 6:34 P.M.

Council members present at the meeting: Vice-Mayor John Mulholland, Anita Cereceda, Daniel Hughes and Garr Reynolds.

**Absent from the meeting:** Mayor Ray Murphy.

**Town Staff present:** Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo and Town Attorney Richard Roosa.

**II. PLEDGE OF ALLEGIANCE**

All assembled at the meeting recited the Pledge of Allegiance.

**III. INVOCATION GIVEN BY THE REVEREND WILLIAM DODD**

**IV. PUBLIC COMMENT ON AGENDA ITEMS**

**A. TIM LINSKEY**

Mr. Linskey advised that this is the third time over the past two years that he has spoken to the Council regarding the construction of Palmetto Street. He is here tonight to get our approval for the construction and to go ahead with the bids on this project that came in \$20,000 over bid. With the 50-50 split relationship with the Council, he does not feel that this will be too much for the residents to handle.

**B. DON DEANE**

Mr. Deane stated that he would like to ask the council members to help the taxpayers and residents of Anchorage Street. These residents have been pitted against each other by being encouraged to give names of residents who they think are in violation of auxiliary apartments. This type of thing should cease, especially when many of the houses have been built prior to 1984 and the auxiliary apartments are conforming. They need for the Council to give closure to the homeowners who are being subjected to this type of action lately. If it means revisiting the comp plan or some other method, they hope we will do that so that those who do have auxiliary apartments can feel more relaxed.

**C. DOLORES YOST**

Mrs. Yost advised that with respect to the pool, she said she knows that we are looking for an administrator and she feels that this would be a very costly way to go. As a group, we should be able to get volunteers to run the pool and have lifeguards during the time that the pool is open. Two lifeguards could take care of all of the equipment and all of the chemicals. Volunteers, of which she could be one, would be glad to put time in to help run the pool operation. This would save us a lot of money. Most people on the Beach are on fixed incomes and do not have high assets.

Regarding the Mound House, when we had open house last year, she and others filled out forms to serve as volunteers but were never contacted. She read in the paper that residents are urged to come to a meeting despite never being called regarding volunteer duty, and she resents this.

Mrs. Yost says that she hopes that we will tax everyone a certain amount of money every month instead of taxing the electric bill. Most people who live here in the summer are year-round people and that's when most electricity is being used because of the hot weather. And they will suffer tremendously if we only take from them as, once again, they are on a fixed income. People who come here in the winter do not have as high a bill as those who are here in the summer.

## **V. PROCLAMATION: CITIZENS DAY**

Vice Mayor John Mulholland advised that the date for Citizens Day has passed and he would, therefore, not read the Proclamation. When Mayor Ray Murphy returns, he will mail it out.

## **VI. CONSENT AGENDA**

**A. Approval of Minutes: August 30, 1999 and September 13, 1999**

**B. Review of Financial Reports for August 1999**

**C. Resolution: Hyde Park Beach Access Determination**

Councilwoman Anita Cereceda made a motion to approve items B. and C. and that the minutes of August 30, 1999 and September 13, 1999 be tabled.

Discussion:

Councilman Garr Reynolds said he would like to check on what appears to be an error in the minutes of August 30 and Councilman Dan Hughes would like to make corrections in the minutes of September 13.

Councilman Garr Reynolds advised that he objected to C., the resolution, because it says to clear out the Hyde Beach access completely. He is glad that it has been declared a beach access and he's glad that some time in the future it will be completely cleared. But at this time he feels that we're encroaching upon the privacy of a very fine lady and gentleman who have lived there for years. They are in their retirement years and he would not want to do anything that would interfere with their privacy. For this reason he would object to the part in the resolution that says to clear the access of all trees. At a later time, this could be accomplished.

Councilwoman Anita Cereceda commented that if we are designating a beach access as a public beach access, then regardless of who the adjoining property owner is, it is a public beach access and it should be designated so and utilized to its full capability for the public. Vice Mayor John Mulholland and Councilman Dan Hughes agreed.

**MOTION:** Made by Anita Cereceda and seconded by Dan Hughes to approve items B. and C. and that the minutes of August 30, 1999, and September 13, 1999, be tabled until the next meeting. Passed with 3 yeas and a nay vote from Garr Reynolds.

## **VII. ADMINISTRATIVE AGENDA**

### **A. Attorney Howard Freidin representing adjoining landowners on the Trash Compactor.**

Attorney Freidin said that he represented Dennis Holland, Trustee, and the 150 San Carlos Boulevard Corporation that owns the business known as Winds. Mr. Holland's properties are the parking lots on the other side of Center Street. They are asking us to delay putting up a compactor building at this time. It may cause odors, it is definitely going to block their view and his clients believe it will decrease property values.

The primary concern of the Council according to its minutes is the garbage question. And what has come out of the garbage question is a building that is 33 feet tall, 55 feet wide and approximately 30 feet long. The building as structured will take up 15 parking spaces according to the current site plan. They have hired a national company called HDR Engineering that came to Fort Myers Beach last Wednesday and met with the city planner. This company recommends installing a compactor first and seeing whether it meets our needs. Mr. Freidin's clients suggested that the owners of the Winds building provide to the city at no cost a compactor to be placed on Center Street for a test run. Although the building has been designed, it is his understanding that the compactor has not been selected. The Parks Department has said that the compactor by itself would only take up two spaces. The compactor would only be 8 feet high while the building would be 33 feet high and would block the Winds building. He, himself, has looked at alternatives. It is his understanding that the garbage is going to be picked up by an individual and brought to the compactor, either by use of a black truck that carries 20-25 cans or by a motorized vehicle which carries only four cans. Until the method that will be used to utilize the compactor has been established, it's hard to determine what site is appropriate.

It is their plan to bring back the people from HDR Engineering, who are solid waste experts, to see whether the proper system is being used and then make further recommendations to the Council. But in the interim, they would advise putting the compactor in the site mentioned.

#### Questions by the Council:

Councilman Reynolds asked Mr. Freidin if he had been able to find anything in the immediate area. Mr. Freidin advised that there are properties close to Times Square. People have responded to the letters he has written advising that they have property for sale in the C-1 zone. He has not followed through with those because if we were going to use the little vehicle, even two more blocks would make a difference. He has spoken with the DOT, and they don't seem to object to the use of a trash compactor underneath the bridge. But his clients' suggestion is that we put it where we want to put it and test it out. We should see if it's going to work before building the building, which would be a substantial use of state funds that perhaps could be used for other projects.

Councilman Hughes stated that he knows that wherever we put the compactor, somebody is going to be unhappy with it. He asked who is going to assume the costs. Mr. Freidin responded that the owners of Winds would pay for the renting of the compactor for the next six months for the test run. It will be a sealed system and shouldn't need air conditioning.

Mr. Hughes advised that the Times Square merchants have been unhappy with the

amount of garbage collection being done with the Town assuming the cost. We are trying to find our way through this maze and cut costs. He appreciates Mr. Freidin's position on this, but asked if he has spoken to any of the merchants in Times Square about the garbage situation. Mr. Freidin has said that this wouldn't change any of the costs that we've proposed. Winds is paying for the equipment for the next six months and the Town will not be obligated after that. But he needs to give us alternatives that are positive, perhaps another location. He can't do that, however, until he finds out how the 95-gallon cans will be moved.

Mr. Freidin said that the compactor would go in the same location chosen for the building and they would landscape it.

Councilwoman Cereceda pointed out Tim Englim, an owner of Winds, who was sitting in the audience. She advised he was a good friend of hers. She had talked with Mr. Freidin this afternoon regarding the history of the trash, which goes back four or five years before the beginning of the Town when discussion of the project first began. She said she was open to any possibilities, but what she couldn't be open to is subjecting the Town to another year of indecision regarding the trash. She knows of no other location for the compactor and the whole purpose of the house was to make the compactor less obtrusive and that it would eliminate odors, be clean and be less offensive. If, however, the Council wishes to pursue a trial of just the compactor, we should pursue it and it should not be at Mr. Englim's and Mr. Holland's cost. Mr. Freidin explained that they wanted to make it easier for the Town to try out the compactor by paying for it themselves and are very interested in landscaping it nicely so that it will not be seen as ugly. It may meet everybody's needs without the building.

John Mulholland said that if we have a six-month trial of the compactor, we go right into the height of the season and that's where we had our disaster last year. Mr. Freidin countered with if construction is started, it would seem to him it would run through November and December. The trial could even be for seven or eight months and they would pay for the cost.

Asked by Dan Hughes what his major concern with the building was -- height, size, odor -- Mr. Freidin replied all of the above. Dan Hughes asked if it would make a difference if the building were 27 feet high instead of 33. Mr. Freidin said he thought from an aesthetics standpoint, it would still make some difference, but it wouldn't be as bad as something being higher.

Dan Hughes asked Mr. Freidin if his clients would agree to pay for a one-year trial period, and Mr. Freidin said that they would. Mr. Hughes then said if the Town should choose to defer this matter, he certainly would welcome the opportunity to have the clients pay for the compactor trial. He doesn't know why the Town should pay for a test program that we weren't planning on. Anytime that we can save the taxpayers money, we should.

Anita Cereceda stated that in four years Mr. Englim is the first business owner to come into these chambers and offer us possibilities, offer to pay for them, and make a proposal that if only out of courtesy she thinks we should try. When we put the dumpsters in the park, all we had were complaints. The same thing happened when we moved them under the bridge. Now that we have the one business owner who is not generating any trash that will be put into that compactor and has spent a considerable amount of time and money to bring this proposal to us, we should try it. But if we try it,

let's still assume the responsibility that we should assume and not pass it off. This is a perfect example of a private business coming up with something that a government can't.

Vice Mayor John Mulholland called on Bill Spikowski to speak. Mr. Spikowski said that the proposal to build this building is one that will work very well, but he doesn't want us to think that we won't be considering alternatives. For one thing, this is an elaborate building that's not just for trash, but is a maintenance garage for Times Square for the county vehicle, a public restroom and a beautiful pavilion. As Mr. Freidin has said, this is the first thing you're going to see when you come into town and it's got to be good. Being good also means being expensive. If we turn Mr. Freidin's offer down tonight, we may find ourselves in two or three weeks unable to afford this building and needing to look at alternatives. As for the alternative, Mr. Spikowski said, he really can't imagine that we'd want to put a trash compactor on Center Street at the entrance to the town, even if it doesn't smell. This is a very large and industrialized piece of equipment. It is ugly. Landscaping can be done to some degree, but access to this machine is needed to put trashcans into the machine and access is needed for electrical power and room for maintenance. It's not really a good solution, nor is the idea that we could put it there in order to learn what kind of equipment we need to move the trash. The kind of equipment we need is based on where we have the building and it's not the other way around. If we put the building over on San Carlos Island and buy private land, which is always something that we could consider, we're going to need a much larger piece of equipment and much higher labor cost to get it. But it would be on a piece of land that's industrial and out of sight and, therefore, the building would not have to be as beautiful. But the idea of having it on the right-of-way of Center Street is something he cannot contemplate as a good idea, except that if we can't afford to build this building and don't know what to do until next spring, we might have to do it.

As to other options, there are still other locations where the compactor might be that would still be incredibly ugly. Putting it under the bridge was considered, but you lose the same number of parking spaces. And you would need about a 70-foot space to back up a 40-foot truck end to end to the compactor in order to lift the compactor on the truck and pull it out. We ended up with the space on Center Street because there we have a long, dead-end parking lot, and the parking aisle that will be in use every day for beach parkers is the place where the truck pulls up and so you're not wasting any space. Another place would be down where the curb dumpsters are. But then you not only have greatly increased the distance to haul it, but you're going to be putting a piece of equipment out on the ground. Florida DOT owns that land under the bridge. It's very possible that we may be able to get permission to put the compactor there, but they don't want buildings under that bridge. Anything we do to start enclosing the compactor becomes a permanent improvement that can't be easily removed for Florida DOT purposes.

Mr. Spikowski said that the proposal they have for the building has four levels of redundancy on odor control and they hope that through time not all of them would be needed. The building also has a shell for public men's and women's restrooms that they don't plan to build now. They would only be building the shell and no more. It also includes the garage for the maintenance vehicle and the outside pavilion, which is purely decorative and incredibly visible from two directions. It is possible to build a smaller building without the wings and save a lot of money, but would we want this in the center

of the Town?

Mr. Spikowski said he had discussed with Mr. Freidin and Mr. Englim the visibility question at some length and presented them with an aerial photograph of their building highlighted and this building placed in an exact scale. The Winds building is not blocked as you come over the bridge. At the right turn lane onto Fifth Street, the building begins to block one of the three signs on the Winds building. The height is irrelevant to visibility; it's the width and the size of the building. He can't imagine visibility as a reason not to put up the building. However, he doesn't consider a bare compactor on Center Street a realistic test of a concept. How are you testing a compactor by putting it out in the sun? How are you testing the possibility of hiding a compactor by putting it in full view?

Councilman Reynolds asked Mr. Spikowski what would be the extra cost involved in taking trash across the street rather than to the present location under the bridge. Mr. Spikowski said he didn't know, but that the biggest difference in cost would be if we went over the bridge. Most of the trash is generated in tourist season and the trip over the bridge would be held up by traffic congestion. At the location on Center Street, trash could be wheeled there or loaded onto a small cart to bring it there.

Mr. Reynolds asked Mr. Spikowski if he is saying that the compactor could not be buffered on Center Street. Mr. Spikowski said that they could move some asphalt on Center Street and put in soil where they can plant shrubs around the compactor.

If we put the compactor on Center Street and it worked there, could the building be scaled back? Councilwoman Cereceda wished to know. Mr. Spikowski told her that it could. In the very beginning they had talked about a very small compactor room, but it didn't have the same look and feel as the larger building.

Vice Mayor Mulholland asked if we take advantage of this free offer for a year, would there be odor control. Bill Spikowski said that the owner could provide three of the five levels of odor control that we can in the building: an ozonator device that reduces odors; a deodorizer that covers up odors; a little unit where the trash can is dumped can have a lid that seals it up when trash is not being emptied into it. The problem here is not that its just garbage, but that it's restaurant garbage that is wet and smelly.

Dan Hughes stated that what they're proposing is that the compactor will be exactly on the site that we're proposing, without the house. And we haven't tested anything, not the location, the capacity and capability of this equipment, the economics, and the odor. Mr. Spikowski agreed but said that the motive to use compactors is because they compress trash to one-fourth of its previous volume. Dan also pointed out that the 70 feet for the truck would be needed whichever way we go. Mr. Spikowski stated that this limits where the compactor could be placed. Dan Hughes also felt that we should test the place where we want to put the permanent building. Going over the bridge is not economically feasible, and if this is the site where we have now determined to put the compactor, what is wrong with putting a compactor in an enclosed facility even if it is not the most attractive thing in the world. Mr. Spikowski said he thinks Mr. Hughes misunderstood the test that Mr. Freidin is proposing. What he wants to do is to give us some experience with a compactor while he finds a place, maybe across the bridge or somewhere else to build a building. Mr. Hughes said that the determination of whether the site is good or bad is not going to be the property owners' but the Town Council's.

Councilwoman Cereceda asked what type of landscaping would be done around the temporary compactor. She would like to see what they could show us by next week's meeting. Mr. Freidin said that Mr. Englim would do whatever the city wants in terms of vegetation, including large full-grown plants. Their aim is to make it attractive.

Ms. Cereceda also asked Bill Spikowski for an update. Mr. Spikowski said that contractors are reviewing the plans and their bids are due October 13.

Dan Hughes would also like to know exactly what the property owners will do by our next meeting. Mr. Freidin said this was agreeable to him.

Discussion:

Garr Reynolds stated that as Anita Cereceda has already said, he thinks this is an exceptional and unusual offering from a business and we should go ahead and try this. He had a little trouble obligating them to a full year of expenses and would prefer six months. They have gone out of their way to do something here and we should try to work with them.

Dan Hughes advised that he said that one year was the maximum that would be their obligation, but that the Town could terminate this in three weeks, one month or six months if it is not working out.

**MOTION:** Made by Anita Cereceda and seconded by Dan Hughes that we table this discussion until the meeting of October 16th where we will address the issues just as outlined by Mr. Hughes. Passed unanimously.

#### **B. First Reading: Panhandle Ordinance**

Vice Mayor Mulholland read the ordinance. He asked for a date for a public hearing and Town Manager Marsha Segal-George gave October 4.

#### **C. Palmetto & Easy Street Bid Award**

Vice Mayor Mulholland said he knew that the award on the bid for the Palmetto reconstruction are estimates that we originally made and the Council approved and are somewhat lower than the actual bid that came in. Our estimate was \$73,772.36 and the lowest bid that came in was from Ajax Paving at \$92,096.62. It looks like it's going to cost the Town about \$10,000 more and \$10,000 by the residents in this taxing district.

Councilwoman Cereceda made a motion that we accept this bid. Town Manager Marsha Segal-George asked that we include in the motion authorizing the Mayor to sign the contract.

Discussion:

Dan Hughes asked if this motion had been reviewed by our Town Attorney and was told yes.

Anita Cereceda explained that the reason for her motion was because the difference in cost did not change in her mind the fact that we agreed to split it 50-50. Obviously, the individual property owners are going to bear half of that cost and no one has come forward saying that they don't want to go through with it. She feels that we have made a commitment to them and she'd like us to stand by it.

**MOTION:** Made by Anita Cereceda and seconded by Dan Hughes that we accept this bid and proceed with the reconstruction of Palmetto Street. The Mayor has authorization to sign the contract. Passed unanimously.

**D. Discussion of Easement Dedications**

Town Attorney Roosa said that there should have been distributed to us an ordinance which he hopes better describes our instructions. Its purpose is to give direction to the Town Manager in the handling of expenditures for drainage and maintenance.

Dan Hughes stated that Attorney Roosa only referred to drainage and maintenance with no reference to initial construction. Mr. Roosa said that normally the term construction is used when you start a development with raw land. But once it's inhabited, it is maintenance from then on.

John Mulholland asked what the Town could do when it pays the County in good faith and the County does a shoddy job. He advised that the Town had paid for maintenance and the County came in and dug culverts on Seminole Way and on the corner they destroyed about 10 feet of lawn. It was pointed out to him that in digging they had undermined the street, so the street now will probably crack and break off. Town Manager Segal-George said that they would take care of it. Mr. Roosa said that that is a different issue, but we have an agreement with the County and they're required to do it in a workmanlike manner. In this particular instance, we're going to have an engineer come out and design the work that's to be done.

**MOTION:** Made by Anita Cereceda and seconded by Dan Hughes that we accept the resolution as presented. Passed unanimously.

**E. Discussion of Code Enforcement Case 99-324, Jerry and Olivia Sawyer. This matter is brought forth by Councilman Reynolds.**

Councilman Reynolds advised he met Mr. and Mrs. Sawyer in late August when they called him about a problem they had experienced beginning back in May. They went to court to evict a tenant who had refused to pay rent. They called Mr. Reynolds because their tenant had reported them as having an illegal apartment and they wanted to appear before Council. They are here tonight to tell their side of the story. Mr. Reynolds said he had a problem with this being complaint-driven and the fact that the code enforcement officer had asked them if they knew of anyone else on the street. Mr. Reynolds feels that we need a better enforcement method than pitting neighbors against neighbors.

The Sawyers were asked by Vice Mayor Mulholland to come forward. Olivia Sawyer introduced herself and advised that she was born in the Yucatan Peninsula but raised in Mexico City. She became an American in 1988. She felt that her home on the Beach was a paradise until recently when neighbors seemed to turn on each other.

Jerry Sawyer, who is in real estate, advised that they have lived on the Beach since 1982. He has given packets with respect to their situation to the Town Manager. His problem centers on the rental of a duplex apartment. He stated that the Town's policy on accessory apartments and the enforcement of it has proven to be a disaster. This complaint-driven policy has been twisted into a totalitarian type weapon turning neighbor

against neighbor and producing an atmosphere of ill will and mistrust. They request that this policy be suspended immediately and that all citations to date be suspended or voided while it is thoroughly reviewed. The Sawyers request that they as owners of a duplex on Anchorage Street be allowed to rent out an accessory apartment just as owners on the rest of the Island can.

Attorney Roosa was called upon. He noted that the code enforcement law was a state statute which allows for municipalities to enforce their various codes through a code enforcement proceeding. Prior to 1968 that was done through a municipal court. It is complaint-driven because of the economics involved. The Town does not have sufficient staff to go from house to house to establish that everybody is in compliance. When it is brought to the attention of the Town for whatever reason, then the issue becomes is the property in compliance with the code? If, for instance, this Council allows someone to have an apartment in violation of the flood insurance law, then the Town will lose its authority with the federal flood insurance and no one will get loans for any home construction on Fort Myers Beach. So the code enforcement procedure is very important to this Town.

With respect to being accused of something illegal, Attorney Roosa said that if someone is being accused of a crime against a person, he certainly has a right to know who is making the accusation and the right to a cross-examination of that witness. If you violate an ordinance, however, it really doesn't make any difference who turns you in. Everybody in the Town is expected to comply with the ordinance.

Councilman Hughes stated his agreement with Mr. Roosa's remarks. He told Mr. and Mrs. Sawyer that while he sympathizes with their situation, how it came to the attention of the Town is totally irrelevant. The matter of accessory apartments was one of the most discussed issues in the hearings before the Local Planning Agency and also before the Town Council. He would refer them to the pages of our comprehensive plan, Illegal Apartments. It seems to him that what is being presented to us tonight is a lack of code enforcement and looking the other way if a violation does exist.

Dan Hughes further stated that a citation isn't legal or valid at the time of the citation but only when it is found that you are in violation of what you are alleged to have violated in the citation. And this Town Council is not a judiciary body. We do not have the authority to determine these issues. If something is, in fact, a violation of our code, that should be enforced, and the only remedy is a change of the applicable ordinances. This case would require more than that, because it would require a change to the comprehensive plan. He does not see how this Town Council can take any action here other than referring this matter back to the LPA for an amendment to our comp plan. And that amendment would require the LPA to recommend to us that we increase our densities in effect. He would not be in favor of referring that back, because when it returns here, he would vote against it.

Vice Mayor Mulholland told the Sawyers that we don't have the power to grant them what they're asking us to do. We have to stick by our laws.

Councilwoman Cereceda told Mr. Sawyer that just so he'd know in the future, the Mayor of Fort Myers Beach has no more authority than any one of the council members. And, unfortunately, none of us has any authority within the Town unless we are acting collectively. Collectively we could change this law. The question is whether or not we are so inclined to change the law. Ms. Cereceda also stated her discomfort because this

is not the proper forum for the Sawyers' issues. She asked Mr. Roosa how the public could begin an initiative for a comprehensive land use plan amendment. Do they need a councilperson to champion that cause?

Attorney Roosa stated that there are two types of amendments to the comprehensive plan and one is property oriented. The easiest thing for a property owner when charged with a code enforcement violation is compliance.

Mr. Spikowski was called back. He said that Mr. Roosa had correctly stated that no variances could be granted to the comprehensive plan. The density on Anchorage Street was raised in the new plan from 6 to 10 units per acre and that was accepted by the state, but only because in the same series of amendments density was lowered on the majority of the island from 6-4. Not only was density raised on Anchorage Street to allow duplexes, but also on Santos Street and about eight or ten other streets. As for the flood regulations for a building that was built after 1984, if an apartment has been closed in down below, there is no fixing that. It is our law that is being violated, but if we don't keep that law in place the whole island loses flood insurance. Mr. Spikowski went on to detail the options that we do have. In an owner-occupied home, a second unit can be provided and rented. This accessory apartment policy could be made a little more lenient through amendments to the comprehensive plan and later to the land development code.

Dan Hughes and Garr Reynolds asked questions of Bill Spikowski. Mr. Reynolds said he had suggested that we should consider a committee to identify all possible units on the Island that do not show recorded construction permits. He would ask the Council to delay any decision until the Town gets a plan of action in place so that we can deal with these problems equitably and fairly.

Councilman Reynolds made a motion.

**MOTION:** Made by Garr Reynolds that the Town Council and Staff delay action on the Sawyer problem until such time as a better plan of enforcement is in place and direct Staff to proceed toward the development of an appropriate enforcement plan.

There was no second to Mr. Reynolds's motion. He stated that he'd like to remind all of us here tonight that many of our residents have lived very productive lives and they need the chance for the same type of life in retirement here on this Island. The Sawyers should be treated with more dignity than with this haphazard enforcement plan and he hopes that Council will give more consideration to that. This is why he asked them to come here tonight.

Councilwoman Cereceda stated that we have a plan of action in place. We have code enforcement that operates according to state statute. She sympathizes with the Sawyers, but it does not change the fact that it is illegal. She did not second his motion because she does not feel that this is the proper forum for this particular situation to be addressed. There is not an action that this Town Council can take to remedy Mr. Sawyer's situation. If we were to overstep ourselves and attempt to take some action, we would be opening Pandora's box and undoing everything that we have worked so diligently to achieve in the last almost four years. If Mr. Sawyer wishes to proceed with a request for whatever remedy he can legally request, or if it is Mr. Reynolds's desire to

bring forward to the LPA a comprehensive land use plan amendment which would increase the density within our Town, then that would be something that he would initiate. But that we have no sympathy for Mr. Sawyer is simply not the case. However, she could not and would not entertain the idea of a comprehensive plan amendment to increase the density on the Island.

Councilman Hughes said he would totally endorse Councilwoman Cereceda's remarks. He also stated that we will be adopting a budget this evening that will call for an additional code enforcement person, and he would hope that if Councilman Reynolds is concerned about not having complaints come from neighbors but by legitimate code enforcement officers that he would support the staff in seeking additional enforcement personnel. He is sure that the Sawyers are very fine people, but that is not the issue here tonight.

Mr. Sawyer stated that he heard a contradiction in Mr. Hughes statement by saying that he's already guilty even though he declared that the Council is not a judicial body but a legislative body. We've also said that it will be expensive to have anything other than a complaint-driven system and it's going to be expensive to have anything other than the federal flood insurance program that we have. They would all like some input into this. He agrees with Councilman Reynolds that we should suspend not only his case, but every policy in order to get more feedback and a chance to better think things through.

Vice Mayor Mulholland thanked Mr. Sawyer for coming forward although we cannot do anything for him without changing the comprehensive land use plan or the ordinance. He is welcome to come forward again, however.

**BREAK -- 8:55 - 9:05**

## **VIII. FINAL PUBLIC HEARING: 1999/2000 BUDGET**

### **A. Resolution establishing ad valorem tax**

Public Comment:

A. Johanna Campbell. Mrs. Campbell said she was going to make one more pitch for the utility tax over Jodi Hester's plan for the millage rate to be raised. She still feels that it is fairer to do it with the utility tax. If we don't want to go along with that, then we should have the raise in millage rate because she believes that these two projects are so important for this Town. And as both she and Anita Cereceda have said, they would like to see them in their lifetime.

B. Jodi Hester. Mrs. Hester said she'd like to see us make a decision one way or the other also, although she would prefer the ad valorem increase.

C. Nick Campo. Mr. Campo recounted what had happened on Marco Island last year when a utility tax came before them. They found that it was not fair for the business community and, in fact, was so disproportionate that the Council voted it down.

Councilman Dan Hughes made a motion to adopt the millage resolution, seconded by Anita Cereceda.

Discussion:

Councilman Reynolds said he understood that the millage rate would remain the same at 109.61.

Councilwoman Cereceda said that she was seconding Dan Hughes' motion for discussion because she's assuming that we have no interest in raising the millage as an option for generating funds for streetscape or beach renourishment.

Deputy Town Manager John Gucciardo explained that the way they've structured the budget and the budget numbers is that this year for the projects that we have identified in the capital improvement portion and also for the operating budget no increase in millage would be required to meet those numbers. So we could, for example, maintain the same millage rate we've had since the Town incorporated and meet all the budget requirements and the budget would be in balance for this year. The reason why the Town Manager indicated in the budget message that we may want to consider at this point alternate revenue sources either in the form of a millage increase or a utility tax is because if we look at the capital improvement budget for the four years out to pay for the two major projects that we have identified, additional revenue sources would be needed, at least as far as their interpretation of the numbers would go. The millage rate, if we did increase it, need not be for this budget cycle. As a matter of fact if a millage increase was determined to be appropriate tonight, there are steps that we would have to go through in terms of a mailing to the residents to increase it at this point.

Town Manager Segal-George advised that in line with what John Gucciardo said, regardless of which we might be interested in, we could also give them direction with regards to looking further at the utility tax and bringing back to us some specific options with regards to it. She thinks that one of the criticisms of the utility tax has been what it is going to be on, how much it is going to be, what it is going to generate and who would receive exceptions -- all of those kinds of things that we have not done any research on. We would not be looking at putting this into place until late 2000. Neither option has to be effective tonight or be put in place for this budget.

Dan Hughes said he was not enthusiastic about a utility tax for the reasons previously expressed, but he would like the Staff to examine the situation further and take specific examples of what this would cost the average homeowner and the average retail and commercial establishment. This is something that need not be determined this evening, although Mrs. Hester has expressed a wish that we do resolve it tonight. If we were to resolve it tonight, he would vote against it, but he thinks we should give it further study.

Vice Mayor Mulholland said he agreed with Councilman Hughes' remarks that we do have to direct Staff to come back to us with more information to be fair. He is also looking for other sources of money. According to an MPO traffic study in August, 47% of people using Estero Boulevard in August are not townspeople and 12% were work-related. He would like for Staff to look at TDC, or at any means whatsoever where we can get the tourists who are large users of the Island to contribute to these projects. Dan Hughes said he agreed with this.

**MOTION:** Made by Dan Hughes and seconded by Anita Cereceda for adoption of the millage resolution prepared by the Town Attorney as presented to us this meeting. Passed unanimously.

## **B. Resolution adopting the 1999/2000 Budget**

Councilwoman Cereceda said she'd like to see a change in wording under Cultural Events on page 27 of the budget. She doesn't want to match Town dollars with in-kind service from an organization. She would like for it to read "The Council will partner with the public for up to 50% of the total monetary costs for approved events."

Councilwoman Cereceda said she had asked a question today about beach accesses and whether or not code enforcement could be utilized to maintain and manage parking meters, and that answer was yes. That's from the budget initiatives on page 6.

Councilwoman Reynolds made observations on different items in the budget and Staff gave clarification where needed.

Councilwoman Cereceda said she would like to make a motion to approve the budget, seconded by Dan Hughes.

### Discussion:

Garr Reynolds asked if we were approving all of the projects listed under the capital improvement plan when approving the budget, and he was told yes. He said he thought those were proposals. Anita Cereceda explained that they were line items. John Gucciardo stated that on the expenditure side of Exhibit A of the resolution, \$2,008,000 would be the expenditure out of this year's budget that would go towards those capital improvement projects. We will be looking for additional revenue sources. Garr Reynolds indicated that at a later time we will be asked to raise funds in order to do these projects. Or, according to John Gucciardo, at the will of the Council to not do these projects.

Councilwoman Cereceda stated that she would support a tax, be it utility or otherwise or millage rate increase, to see the Estero Boulevard streetscape project and beach renourishment come to fruition. She would hate to see those two projects become key political issues for the upcoming election next year.

Vice Mayor Mulholland thanked Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo and the Staff for the excellent job they have done on preparing this budget and its revisions. The packet they have given us is very clear and explanatory although complex. This was echoed by Garr Reynolds.

Anita Cereceda said that Johanna and Jodi have both been champions on both sides for these two things. It's not eliminating either one and it is making the millage rate political. And the utility tax is already in place. It's just that it's zero.

**MOTION:** Made by Anita Cereceda and seconded by Dan Hughes to approve the fiscal year 1999-2000 Town of Fort Myers Beach's final budget with addition of the word "monetary" in the policy statement. Passed unanimously.

John Gucciardo stated that last year the Legislature enacted a change to Chapter 99-341 of the laws of Florida. This has to do with the possibility of putting in place an additional homestead exemption for seniors. As we know, if you declare a property a homestead you have \$25,000 exempted from your property tax. The possibility now is for senior citizens who were at least 65 years old on January 1 of the fiscal year, who

generally speaking meet a criteria of a household with income which in a prior year does not exceed \$20,000, will now be able to apply for an additional \$25,000 exemption. If it is the will of the Council, we can investigate what that would mean in terms of our revenue and look to put that in place if so desired. This is purely discretionary. Garr Reynolds said he would not object to that. Dan Hughes said he wouldn't have a problem with that unless the cost of doing this would be an extreme burden on the Town. Dick Roosa said he would recommend this and he could prepare a resolution by next Monday night.

## **IX COUNCIL MEMBER ITEMS AND REPORTS**

Vice Mayor Mulholland noted that the council members each got a letter from a homeowner saying that the Primeau parking lot drainage that was approved at the direction of the Council is causing a drainage problem on the homeowner's property. Attorney Roosa stated that this is a civil action. Town Manager Marsha Segal-George advised that there was a provision in the approval for Mr. Primeau's lot that stated that he had to provide a drainage system on his property, and up to this point he has not. When she talked to Development Review last Friday, they said that he finally has all of his plans in. At one point she was going to close the lot down, and Mr. Primeau said he was going to do everything he needed to do. If we had gone by it today, we'd have seen that everything is starting to be regraded over there.

Garr Reynolds asked if Mr. Primeau was going to make a swirl in the side of his lot or something to catch the runoff. Mrs. Segal-George stated that he's supposed to provide for the drainage on his property and not allow it to sheet flow off his property onto Santos.

Vice Mayor Mulholland stated that on the beach accesses there are some problems, specifically on Coconut. The work that the County has done tilts and runs the water off onto a private property. They dug a shallow trench in the sand, maybe six inches deep, which is not adequate for large portions of water. He asked what could be done. John Gucciardo replied that they've already approached the County about the work on Coconut. The explanation they were given is that where the water accumulates is the retention area. It is designed to accumulate there, because without that, that water would be flowing into the private property. The retention area is on a public right-of-way. Mr. Mulholland stated that it's not working, and John Gucciardo said they would pursue this.

Mr. Mulholland also noted that boats are tying up to the docks of houses that are shut up. He has been advised that this is a private matter, but this doesn't make sense to him. He asked Attorney Roosa for his opinion. Dick Roosa said that he didn't believe there was a law against that, but if someone came home and found a boat tied up at his dock, he could untie it.

Dan Hughes stated that we've cut off the funding for Main Street, and he's in agreement with this. But he does feel that it did serve a good function for the community for several years and he would like the staff to draft a resolution commending Jean Mathews for her services with Main Street. John Mulholland said he would thank her for her services, but as far as Main Street goes, he doesn't believe there have been any Main Street functions for the last two years.

Dan Hughes referred to a memo from John Gucciardo dated September 14 advising us of our acceptance into NFIP, the National Flood Insurance Program. Also in the

memo is that we're only one of 69 communities in the country with a 7 or better rating. He would like to express our appreciation for the work that John has done on behalf of all of the residents in the community who will benefit from this in terms of our insurance costs

Garr Reynolds said he would like to bring the issue of Mr. Campo's sign being increased from 64 sq. ft. to 80 sq. ft. back to the Council for reconsideration. Mr. Roosa advised that would require an amendment to the ordinance because that provision was put into the sign ordinance when it was adopted and is now part of our land development code. We do not have the jurisdiction to change our vote on the ordinance, but Mr. Reynolds could move to reconsider the whole ordinance and it would have to be advertised and have two public hearings.

Anita Cereceda said she would like to hear Mr. Reynolds's reason for wanting to reconsider the question. Mr. Reynolds advised that upon looking at the theater from the road, he realized how close the building was to the highway and now doesn't feel that he made a very intelligent vote to increase the size of the sign. People whom he talked to don't like the idea of that large a sign. He now likes the idea of a 64 sq. ft. sign.

Anita Cereceda reminded Council that the size change requested by Mr. Campo was from 32 sq. ft. to 80 sq. ft.

Attorney Roosa said that the motion should be a referral to the LPA to reconsider the 80 sq. ft. requirement in the sign for the theater.

**MOTION:** Made by Garr Reynolds to bring the theater sign issue back to Council for further consideration and discussion. Motion dies for lack of a second.

A new motion was proposed.

Mr. Campo stated that if we wanted to make the size 64 sq. ft., he would make it 64 sq. ft.

**MOTION:** Made by Garr Reynolds and seconded by Anita Cereceda to refer the sign ordinance back to the LPA for amendment from 80 sq. ft. to 64 sq. ft. Passed unanimously.

Councilman Reynolds advised he had stated to Mr. Melsek that he saw nothing wrong with the article he had written regarding the Mound House.

Mr. Reynolds next referred to a letter received from a lady whose son had to pay \$90.00 for a towing fee when his car was towed from Primeau's parking lot. Mr. Reynolds feels that maybe the Town Council should require parking lots to post parking rules.

Another letter received by Mr. Reynolds was from the Bureau of Historic Preservation in Tallahassee and signed by Dr. William Marquart, curator in archaeology, who emphasized the historic and archaeological importance of the Mound House to this area. Mr. Reynolds asked for an update on the deed and was told there was nothing further to relate.

Mr. Reynolds said he was having a problem dealing with the utility tax and the ad valorem tax. At this point he's not sure that we need either. What we need to do is to

monitor our expenditures as we proceed with these projects.

Regarding parking at Bowditch, he understands that the commissioners were taken aback and dismayed by our request for a delay on the parking. He trusts that Council will not delay this very needed project very long. The people in this Town need it and deserve it. It is their money and they should be able to use our park.

Mr. Reynolds asked Attorney Roosa if he was going to comment on the County's memorandum in opposition to the motion of the intervener, Ray Murphy. It appears to him that this action has been rejected and he'd like to know where we stand on the Avatar purchase. It appears that Lee County has the right to purchase this Avatar system without our consent. He'd like to know if that is true and if they're going to be able to operate in our Town whether we like it or not.

Another question posed by Councilman Reynolds was if any of the advisory committees were required to file financial disclosure statements each year like council members do, and he was told yes, they were.

Councilwoman Cereceda thanked Nick Campo for acquiescing to 64 sq. ft. for his theater marquee.

## **X. TOWN MANAGER'S ITEMS**

### **A. New Year's Eve**

Councilwoman Cereceda gave a brief overview of what's going on with New Year's Eve right now.

1. By a unanimous vote of the Committee, it was decided not to sell alcohol in the park.
2. The Sister Cities Program are the only fundraisers to date.
3. They have a schedule of events.
4. Port-o-lets have already been obtained.

New Year's Eve is on track and will be a family event. Tremendous amounts of people are anticipated. No final decision has yet been made on the fireworks barge. She has a contract with the band, The Juice, and is hoping to get monies pledged in place so that we can actually sign the contract. Right now that is the highest priced commodity of any New Year's event.

Allocated is \$15,000 for the fireworks and contributions have been received from several businesses. More fundraising is seriously needed at this point. Ms. Cereceda anticipates coming to the Council with the new line item Budget for Special Events and requesting some other funds for the event.

Councilman Reynolds asked how late they would try to get the trolleys to run and was told until 1:30. The Sheriff has suggested that they be kept running until 2:30. They may ask businesses to make donations to continue trolley service even further.

## **XI. TOWN ATTORNEY'S ITEMS**

Attorney Roosa advised that this afternoon he got the ruling of the court regarding two memorandums. The judge liked the County's memorandum the best. They find that all the parties necessary for the resolution of the issues are properly before the court and that the Town of Fort Myers Beach is not an indispensable party. Therefore, defendant Raymond Murphy's motions to dismiss are denied. The court went on to find that the

County's acquisition of the system is not contrary to the requirements of Article 8 Sec. 4 of the Constitution of the State of Florida, and the court further considered the remaining arguments of the intervener made at the hearing in this matter and finds them without merit. Attorney Roosa said it is his recommendation that the Council authorize an appeal to be filed. He thinks there is a real issue here of constitutional law and that has to do with municipal jurisdiction. The Florida Constitution in his mind clearly addresses the fact that municipal services are to be provided by the municipality and not by the County, and yet that's contrary to the ruling of the court.

Mr. Roosa said he may file for a motion of rehearing, but he thinks that we need an appellate attorney who has had experience appearing before the Supreme Court and he will come back before us next Monday night with a more definite recommendation. He strongly believes that the court has applied 125, which is the County law, in an unconstitutional manner.

## **XII. PUBLIC COMMENT**

### **A. JOHANNA CAMPBELL**

Mrs. Campbell thanked us for again bringing up the issue of the theater sign and she thanked the owners for their willingness to make a compromise.

### **B. BOB GAYDOS**

Mr. Gaydos said that he is on an advisory committee and has never filed a financial report. He was not aware that these were required and would like to be so advised. He was told that the Local Planning Agency and the Council had to file financial reports, but not the other committees.

Mr. Gaydos also advised he had called the Main Street person regarding obtaining a booth for New Year's Eve but hasn't heard back as yet. He is still adamant about the expenditure of \$15,000 for fireworks. He'd like to be put on the agenda with regards to a letter he sent us asking that we reconsider the expenditure.

## **XIII. ADJOURNMENT**

The meeting was adjourned at 10:55 p.m.

Respectfully submitted,

Lorraine Calhoun  
Transcribing Secretary

### **Items for action from the meeting of September 27, 1999**

1. When Mayor Ray Murphy returns, he will mail it out the Proclamation or Citizens Day.
2. The minutes of August 30, 1999 and September 13, 1999 were tabled.
3. Dan Hughes would like to know exactly what the property owners would do with respect to the compactor by our next meeting. Mr. Freidin said this was agreeable to him.
4. Town Manager Marsha Segal-George gave October 4 as the date for a public hearing on the panhandle ordinance.
5. Motion made that we proceed with the reconstruction of Palmetto Street.
6. The possibility now is for senior citizens who were at least 65 years old on January 1 of the fiscal year, who generally speaking meet a criteria of a household with income which in a prior year does not exceed \$20,000, will now be able to apply for an additional \$25,000 exemption. Dick Roosa said he would recommend this and he could prepare a resolution by next Monday night.
7. John Gucciardo advised that they've already approached the County about the work on Coconut Street. Mr. Mulholland stated that it's not working, and John Gucciardo said they would pursue this.
8. The sign ordinance will be referred back to the LPA for amendment from 80 sq. ft. to 64 sq. ft.
9. More fundraising is seriously needed at this point for New Year's Eve. Ms. Cereceda anticipates coming to the Council with the new line item Budget for Special Events and requesting some other funds for the event. They may ask businesses to make donations to continue trolley service past 1:30 a.m.