

**FORT MYERS BEACH
TOWN COUNCIL MEETING
DECEMBER 20, 1999
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

Mayor Ray Murphy opened the meeting on Monday, December 20, 1999, at 9:02 a.m.
Council members present at the meeting: Mayor Ray Murphy, Vice-Mayor John Mulholland, Anita Cereceda, Daniel Hughes and Garr Reynolds.
Town Staff present: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo and Attorney Richard Roosa.
Also present: Bill Spikowski, John Richard, Ron Edenfield.

II. PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance.

III. INVOCATION

Given by the Reverend Tom Snapp, St. Peter Lutheran Church

IV. PUBLIC COMMENT ON AGENDA ITEMS

A. RUSSELL BATCHELOR

Mr. Batchelor advised that he was here to support the Beach Pub in the problem that they're having. He feels that the music there is for the most part enjoyable. He has talked with many people in the area who do enjoy going to the Beach Pub and who enjoy the music. He feels it is an enhancement to Fort Myers Beach. People who do not enjoy the music shouldn't be living in the area.

B. RAY HARTLINE

Mr. Hartline is an Ohio resident who lives down here 6 or 7 months out of the year. He lives just across the street from the Beach Pub and has never been annoyed by the music. They should be allowed to have it 7 days a week if that's what they want. He has letters from people who wrote how much they enjoy the Beach Pub.

C. DICK COPPLE

Mr. Copple advised that his wife is the reference librarian at the Beach Library. He is here, he said, to absolutely commend Jayne Coles on her wonderful leadership these past years. He praised the library's new facility.

D. MURRAY CARSLAKE

Mr. Carslake, also an advocate of the Beach Pub and the owner of seven rental units near it, advised that they have never had complaints from their tenants regarding the music there.

E. ERIC O'GILVIE

Mr. O'Gilvie is the present owner/operator of the Beach Pub. He advised that he was here tonight because it was his understanding that the current owner of the adjacent property to the Beach Pub was dissatisfied with the fact that the Pub was granted a temporary waiver for entertainment. He wished to say that since receiving this waiver, they have taken additional steps to try and suppress what the neighbor feels is disturbing to him. Right now they only have music one day a week during the hours prescribed. They are doing everything in their power to reach an acceptable arrangement with their neighbor. If there were anything else they can do, they would be more than happy to do so.

E. LOUIS BAGLEY

Mr. Bagley declared that when the Beach Pub brings in the bands, they bring in also the groupies that follow the bands, which he can support with pictures and letters he wrote to the

sheriff's department about open containers and people urinating in the street. He feels that Mr. O'Gilvie needs to control the people who are coming in and out of his bar and control the sound level of his music.

F. CHRIS BRUCK

Mr. Bruck lives on top of the Beach Pub and he feels that the owners are trying to control who comes in and out, but we should understand that you can't really control everybody and who those people are. When they feel that a person is not appropriate, they do not serve him.

G. MICKEY HARTLINE

Mrs. Hartline identified herself as a six-month resident of Fort Myers Beach. During the four years they have been coming here, they have frequented the Beach Pub and find it a fun place to go. She stated that people who urinate in the alley are not coming from the Beach Pub but from off the beach.

H. CHARLES CAMPBELL

Mr. Campbell lives directly behind the Beach Pub and reported that Mr. O'Gilvie and others from the Beach Pub had yelled at his sick wife while she sat on her deck. He said that he finds that the bands are loud.

I. KATHY HOLMES

A property manager for Murray Carslake, Mrs. Holmes stated that she looks after seven properties that are close to Mr. Carslake's properties, one less than 8 feet away, and there's never been one complaint in the four years she's been manager. She thinks that Mr. O'Gilvie is doing a great job.

V. PROCLAMATION: JAYNE COLES DAY, DECEMBER 30, 1999

Mayor Murphy read the proclamation declaring Thursday, December 30, 1999 as Jayne Coles Day in the Town of Fort Myers Beach, because of her efforts in modernizing the library and helping in its growth. She is also wished a happy retirement and good wishes for the future. There was a round of applause for Ms. Coles, who voiced her appreciation.

VI. CONSENT AGENDA

Councilman Reynolds pulled A and B.

A. Approval of Town Hall Lease Agreement (shed)

Councilman Reynolds asked if \$10 was the amount on the contract and if we were required to have \$1,000,000 total of insurance. Attorney Roosa told him yes regarding the insurance coverage and that it exceeded what had been asked for.

MOTION: Made by Anita Cereceda and seconded by John Mulholland to approve the Town Hall lease agreement of the shed. Passed unanimously.

B. Renewal of Weather Wagon Contract

Councilman Reynolds declared he didn't think much of this contract last year and thinks even less of it this year. He believes that we need to work with the County and with all the other people on this. He doesn't see how this is going to do much for us here in the Town. It will probably just be a summary of what everyone else is doing anyway.

Councilman Hughes asked Mr. Roosa if he'd had an opportunity to review this and learned he had. Did he have a problem with paragraph 4 where we assume liability in consequence of the activities specified in paragraph 1? No. Councilman Hughes also felt that the indemnification in paragraph 5 was pretty broad and not limited to our negligent acts or our willful and wanton acts, but to anything arising out of a permitted use. Mr. Roosa did not have a problem with this and Mr. Hughes said then he didn't either.

MOTION: Made by Dan Hughes and seconded by Anita Cereceda to renew the Weather Wagon contract. Passed 4-1 with Garr Reynolds dissenting.

VII. ADMINISTRATIVE AGENDA

A. Wilson-Miller supplemental authorization #2 for Old San Carlos Blvd.

Town Manager Marsha Segal-George advised that they had the plan for Old San Carlos Blvd. in that area. This proposal is to give us the detailed engineering drawings for Old San Carlos so that different property owners can go in and then put in a sidewalk or put in other things. They were going to do this as part of the Wilson-Miller contract that already exists. Mr. Richard is here and he has offered to pay half the cost of this contract.

Mr. Richard said that he supported the whole thing 100%. Mayor Murphy told him that was a very nice gesture and that we appreciated it.

Councilman Hughes said he thinks it would be nice if some of the other merchants in the area also got imbued with the spirit that Mr. Richard is demonstrating.

MOTION: Made by John Mulholland and seconded by Dan Hughes to approve the supplemental authorization #2 for Old San Carlos Boulevard.

Discussion:

Councilman Hughes asked if either Bill Spikowski or someone from Wilson-Miller would care to comment on this: summarize for the record what the scope of this is.

Bill Spikowski said that basically it's to take up where the Old San Carlos master plan left off and take us to the point where actual engineering design and construction drawings begin. The question of what the sidewalk material should be was not part of the overall master plan. We need cost data on the material for sidewalks. We also need cost data on the alternatives of not going with the underground utilities. Also, Mr. Richard is interested in paying for a substantial part of the improvements from Times Square to Third Street, which is about two thirds of the project. However, by just doing part of the project, our unit costs might be increased quite a bit and extend the time that the street is under construction. The engineering firm will be looking at each of these things and coming back to the Council to make these decisions. The next step would be deciding how to pay for it and going ahead with the detailed engineering drawing.

Dan Hughes asked about funding for the projects. Bill Spikowski stated that there were a number of possibilities, including special assessments against property owners. We can also bond future taxing funding money. We have some left over tax increment funding coming from the County, but we don't know how much that will be. One of our biggest decisions will be how to do that. It needs to be paying for itself one way or another. We'll need accurate cost data in order to assess the property owners.

Councilman Reynolds asked Mr. Spikowski if he was looking at less expensive type sidewalks, and was told yes, definitely. They've talked about using pavers only for key points or not using them at all. Mr. Richard is particularly interested in knowing the cost of brick pavers.

Mr. Rankin said he couldn't add a lot to what Bill Spikowski has already said. He said he thinks it's important that we stay within the vision of the plan that has already been done. It's going to take some creativity to see what they can do. John Richard's involvement so far has been really important.

MOTION: Made by John Mulholland and seconded by Dan Hughes to approve the supplemental authorization #2 for Old San Carlos Boulevard. Passed unanimously.

B. First Reading: Community Resource Advisory Board

Mayor Murphy read this to those assembled.

Town Manager Segal-George advised that the public hearing will be on January 3 at 6:30 p.m.

Vice Mayor Mulholland said he would like to see some kind of mission statement, a plan on this before he can support it.

Councilman Reynolds said it looked to him like it's another committee and we've kind of run out of space for committees. He just doesn't see the need for it. Section 17 bothered him a little bit. It seems like a committee that's really not necessary. It's just another layer of bureaucracy.

C. Draft: Town of Fort Myers Beach Public Works Policy

Attorney Dick Roosa advised that the purpose of this ordinance is to set up an agency that would be available to operate the utilities at this point. He has drafted an ordinance which implements the authority under Chapter 180, which is a public utility chapter for municipalities.

Town Manager Segal-George stated that if the Council is okay with this, it could go to first reading on January 3.

Councilman Hughes asked if the expressed powers in Chapter 180 read the same way that the statute does, and was told yes. He noted that they don't specifically refer to storm water runoff. He doesn't see anything about surface water drainage. There's nothing in the provisions that deal with roadways. Wouldn't maintenance and improvement of roadways be a part of Public Works? According to Attorney Roosa, Chapter 180 is a very old chapter that was enacted long before local government thought of drainage as a utility. He said he wasn't sure that the Town wants to take the road maintenance out of its general budget and push it over to Public Works. This will be a separately budgeted item. Councilman Hughes said he was just pointing out that roads are normally a function of Public Works and the surface water drainage and storm water runoff are an integral part of this. Many years ago they actually had combined storm water and sanitary sewers. If this language is archaic language in the statute, that could be why they're only talking about sanitary here. But in modern engineering, storm water is at all costs not to be run into the sanitary sewer system. He would like to see whether there is some flexibility in that statute before it comes up for its first reading where we couldn't broaden it to make it clearer that the Public Works Agency would have the authority to deal with storm water drainage.

Mayor Murphy asked if this was something that if we found out later that the agency is in fact needed, then the ordinance could be amended to include all those other matters. He was told yes.

Town Manager Segal-George said that we could also in that Public Works line item bring other revenue into it from gas tax or whatever. If the Council wanted to put roads in here and storm water drainage, we could keep them all within Public Works. And it probably would be clearer if we do it that way. Councilman Hughes said he'd like for our attorney and the staff to give us a position on that at our next meeting.

Councilman Hughes received confirmation that if you establish a Public Works Agency that that will be a fiscal entity on and of itself and the general corporate budget will not interplay with the budget of the Public Works Agency.

Town Manager Segal-George told Councilman Hughes that it was very specific what we could spend gas tax money on. She believes that if we have utility as a surplus that the Council would be able to apply surplus dollars wherever they would want to apply them in the budget. We would not be restricted to just using it for the utility.

Councilman Hughes asked if there were a deficit if we could appropriate funds from the general corporate budget and transfer it to the Public Works budget. Attorney Roosa stated that we could unless they were earmarked, say, for road taxes.

Councilman Hughes asked if we had to stick with the definition of the Town beginning with line 41. He was told it was from the Charter and that we should be consistent.

Also of concern to Councilman Hughes were the duties of the Clerk, who should be appointed by the Agency Manager. He would like for us to give us some thought to a better wording of this.

Line 115, Section 13, where the budget is to be submitted to the Board on or before July 15. We have been trying to do this by the end of June and we might want to consider moving this date up to June 30, Councilman Hughes said.

Vice Mayor Mulholland said if we broaden this from a water utility to include storm water and road maintenance, he thinks we have something very big and he would agree with Councilman Hughes that we need a fuller explanation than we have received tonight.

Councilman Reynolds asked if this was preliminary to an ordinance that Attorney Roosa is preparing and was told yes. Could he name a department in this Town that would be the equivalent of this? No. Mr. Reynolds said it sounds like we're heading toward a department that is going to have to be separately staffed with employees to operate and that Pam Houck would be the person that would handle this. Mr. Roosa said he thinks what he's saying is that currently we're handling drainage and road maintenance by contract, and even after the adoption of this ordinance, and assuming that they were transferred into Public Works, it could still be handled by contract. And even after the acquisition of the water system, that could be handled by contract. So it wouldn't necessarily imply that there would be a need for additional employees. Town Manager Segal-George added that this ordinance wouldn't change the way we currently are doing our business at all.

Attorney Roosa advised that the purpose of this is to establish an agency that can borrow the funds to purchase the water system and have this as a separate entity for the acquisition of the water system. That's the reason he prepared the ordinance. We're doing this to limit the obligation for funding to a specific unit. Only the revenues of the water system will be pledged to retire the debt of the water system. It makes it easy and convenient in terms of funding. Chapter 180 authorizes the borrowing of funds and so it's the type of thing that is recognized by lenders. It gives the Town not only its general municipal authority, but specific statutory authority to borrow the money.

There was additional discussion regarding Chapter 180. Attorney Roosa would recommend that we leave it as it is.

This ordinance will come back as a first reading.

D. Continued Final Public Hearing: Paragliding/Ultralight Prohibition Ordinance

Town Manager Segal-George advised that Dick Roosa had changed the language in Section II. Mr. Roosa said he had shown his changes to the FAA and they had approved them, saying they were no more restrictive than their requirements and would not, therefore, be in conflict.

Public Input:

1. Marcus Anderson, an aviator, said that the aviators are requesting that we establish realistic rules and regulations for all aircraft to follow when flying in and around the Fort Myers Beach area. They are already governed by FAA regulations, which pretty much cover what we're going to be covering. He would be happy to work with us in any way he can if we'd like to formulate rules and regulations. It's really not fair to punish everyone in advance for a few who go around breaking rules. The primary goal of his air club is safety in flying and they practice that everywhere they go.

Mr. Anderson was asked about the scope of FAR Part 103, what it said about height above land. He said that the normal flying altitude is 500 feet, except when landing. Councilman Reynolds ascertained that Mr. Anderson was speaking about 500 feet above objects on the ground and not 500 feet above sea level.

2. Bobby Benn advised that it will be very hard to enforce this ordinance. If the ordinance does get passed he would offer his services, as he has flying boats and could help get

any violators. The whole ultralight community could find out who is flying a certain type of aircraft.

Mr. Benn also advised that ultralight fliers are a self-regulating community. Mayor Murphy thanked him for his offer of help.

MOTION: Made by John Mulholland and seconded by Garr Reynolds to approve the ordinance as revised with Sections IIA and IIB.

Discussion:

Councilman Hughes told Mr. Roosa that he had struck the phrase "privately owned" from the last draft and he thought we were going to change that language to "non governmental." Mr. Roosa said that this was because the aircraft either has to be registered by the Federal Aviation Administration or be owned by a governmental agency. Asked why he didn't feel a need to show a height limitation, Attorney Roosa said that the FAA had informed him that it was unlawful to fly over the land in a town but not over the water around a town. He had changed that language, therefore, to take out "city limits" and just put "land."

Vice Mayor Mulholland advised that we also had a problem with an aircraft landing within 1000 feet of the town, including the surrounding water. We want to protect the bathers from boats and ultralights. He has a problem with ultralights landing anyplace in the water. They should land 1000 feet out and then taxi in. Attorney Roosa stated that we have complete control over take off and landing within the 1000-foot limit, but we don't have any control over aircraft flying over the water. He agrees with John Mulholland that we don't want them landing and taking off within 1000 feet of the water. The pilots have testified that that's not a problem with them. They're not objecting to that language. He might propose that on the second line of Section II after the word "land," strike "or fly," and then after the word "engine," strike "over land." It would then read "No person shall take off or land any aircraft that is propelled by an engine within the limits of the Town of Fort Myers Beach unless the aircraft is registered with the FAA or an aircraft owned by a governmental agency." The problem is that we have the authority for flying over land but not over water. And we have the authority for restricting take off and landing on both the land and the water.

Councilman Reynolds reminded Mr. Roosa about planes buzzing the land a few years back to the annoyance of residents. Mr. Roosa suggested that we could say "shall not fly an aircraft, etc., less than 500 feet above any structure on land and shall not take off or land anywhere within the limits of the Town." We'll make a height restriction of 500 feet. Vice Mayor Mulholland said that the FAA says you can't fly above the land, period. What are we doing to the safety of the Town by saying let those fellows fly over the island at any height? Dan Hughes questioned if the FAA is saying that ultralights can't fly over the land at all and can only fly over water. To him that doesn't make any sense. Town Manager Segal-George advised that they can't fly over a congested area or beach. Mr. Roosa explained that the FAA gives special treatment to municipalities. It's all right to fly over farms and forests but not over congested areas. John Mulholland questioned whether our ordinance would be clear without referring to the FAA regulations.

Town Manager Segal-George suggested making Section II two sections: A and B. Section A would read: "No person shall take off or land any aircraft that is propelled by an engine within the limits of the Town of Fort Myers Beach unless the aircraft is registered with the FAA or an aircraft owned by a governmental agency." Section B would read: "In accordance with FAA regulations, no aircraft as defined in Section IIA may fly over the land within the Town." This was found to be acceptable.

MOTION: Made by John Mulholland and seconded by Garr Reynolds to approve the ordinance as revised with Sections IIA and IIB. Passed with one nay vote from Anita Cereceda.

E. Appeal of adjoining property owner of the noise ordinance waiver approved by Town Council for the Beach Pub

Town Manager Segal-George stated that this was an item that Council considered at their last meeting, after which the Krohn's asked for an opportunity to address the Council. The Council had their letter in our packets. They were represented by their counsel, who wished to make a statement on their behalf.

Counsel for the Krohn's said that there were some facts that weren't brought up at a previous meeting. He referred us to page 5 -- the first of two waiver provisions in the Town's noise ordinance that has a 72-decibel cap. He would suggest that any kind of entertainment enterprise by definition would not reach this level. Oftentimes this business is operating contrary to the health, safety and welfare of the community. Counsel feels that the waiver provision that Council was looking at when they granted the waiver was the second one, which lists three separate conditions. He does not feel that there are grounds under the waiver provisions for allowing a waiver in this circumstance.

Discussion:

Councilwoman Cereceda noted that it said in the Krohn's' letter that the neighbors around the Beach Pub were not considered in the Council's decision, although we had talked about it at great length. We had also discussed with Mr. O'Gilvie the fact that we did not grant him a waiver for the period of time that he had requested. As a matter of fact, Mr. Hughes made the motion to only approve half the amount of time asked for and she had agreed to it with a let's wait and see attitude. She has not received a single call from anyone in that area complaining about noise, but only about personal situations that seem to occur there. She is going to give Mr. O'Gilvie the benefit of the doubt and stand by her earlier decision.

Councilman Reynolds felt that Council made a ludicrous decision in voting the way we did. He agrees with the Town Manager not to allow an increase in the noise level at that location. But he questions how much higher are we to allow. That was not stated in the approved waiver. When that noise ordinance was being prepared, he believes it was meant to give equal consideration for all neighbors. What we approved was a one-sided issue with no limitations. Is the new level for the waiver to be 74 dba's or 104 dba's? Where does that leave our law? We now have a neighbor who thinks that his rights have been violated. Maybe we should right this wrong and require all neighbors to live by the same rule or face the consequences. We are being asked to do something that really embarrasses him if we have to go against our own ordinance and our own thinking.

Councilman Hughes told Mr. Reynolds that he doesn't disagree with what he said, but if he is going to go by neighbors, there have been more neighbors who have said they have no problem with the ordinance than there have been neighbors who say they do. His problem is an apparent inconsistency between the two waiver provisions. On page 6 that waiver gives us the right to grant a waiver for noises created within a zone where operations existed on the effective date of the ordinance. That use has been in existence there since prior to the adoption of the ordinance. If you read Section VII all by itself, we clearly acted within our authority to grant this waiver. If you go over to the prior page, the waiver there requires that it be of such importance to the public health, safety and welfare that the activity cannot be shut down. The question is which of those waivers control. Attorney Roosa felt that both provisions had equal standing. You can use the waiver under 5D or the waiver under Section VII. He didn't think we had to use both.

Vice Mayor Mulholland said that the neighborhood seemed to be in favor of the allowing the Beach Pub to play music there. He is sympathetic with the Krohn's but doesn't know what we

can do to help them. Councilman Reynolds raised the point on decibels. We granted a waiver. Does that allow Mr. O'Gilvie to play music at any level or is he still restricted under the noise ordinance. Attorney Roosa said it could be played at any level. He would assume he's going to come back after 90 days to get approval, so to that extent he does so at his own peril.

Councilwoman Cereceda said that she is assuming that the comments Mr. O'Gilvie made earlier were in response to her comment to fix the problem. Aside from the ordinance, also pointed out to Mr. O'Gilvie was that this waiver will not stop someone from calling and complaining about the noise or taking further action against him with any remedies they might have.

Councilman Reynolds said he thinks we have to keep in mind that we're a town of 7,000 year-round people and we have to have an ordinance for the benefit of the majority of people. Somebody has said the ordinance says that we can't do this. The ordinance says you may, not that you must. The attorney has a letter in his notebook from a person who has lived here since 1952 and they strongly object to the noise in that area.

Mayor Murphy asked if anyone wished to make a motion to rescind the motion that approved the waiver.

MOTION: Made by Garr Reynolds to rescind the motion permitting a waiver to this ordinance. Motion fails for lack of a second.

B R E A K -- 5 MINUTES

F. Discussion of Lee County sales tax referendum

Deputy Town Manager John Gucciardo advised that the County is going ahead with the public referendum set for March on the issue of adding a one-penny sales tax. Two items we might be concerned about is to direct staff, if we are interested, to put together a list of projects that could be used here on the island if the one penny sales tax goes into effect after the referendum and, to find out what list of projects the County is proposing for the numbers that will be generated at the County level. The first time they proposed this idea they linked it almost exclusively to roads, but that's not the case this time. We have not seen their current list of proposed projects. The idea is that if the Council is interested, we could try to put together both lists, bring it back sometime in late January or February, and at that time the Council could take a position on whether or not they want to support the sales tax referendum.

Mayor Murphy said he thought he had read that the County was going to have a citizen's advisory board to recommend the projects.

Something that could be of value to us in coming to the conclusion to support the sales tax referendum, according to John Gucciardo, is a list of possible projects on the County level and also within the Town.

Mr. Gucciardo was asked if he had a rough idea of what kind of money that could bring in. He felt it could bring in 3 million dollars over five years, or about \$600,000 a year.

Councilman Reynolds said he hoped we would go along with this with the County. He believes that the sale tax is the fairest tax anybody can have because everybody shares in it.

Mayor Murphy asked Mr. Gucciardo to gather that information so that we can make a more informed decision.

G. Discussion of whether to place Charter issues on Lee County's sales tax referendum

Deputy Town Manager John Gucciardo stated that since the referendum is now scheduled and will be going to a vote from the general public, we could direct staff to work in conjunction with the elections office to place our charter items on at the same time. This will be in March,

and since it would not coincide with the general elections in November, that might be a consideration. The March ballot would be at no cost to us and we'd have a chance to put all these charter changes, if adopted, in place for the coming year. Also, the November 2000 ballot is going to be a very busy one.

Councilman Reynolds asked why this tax was called a surtax and was told because it was an additional tax.

H. Approval of Spikowski/Dover contract for the Land Development Code

Town Manager Segal-George advised Mayor Murphy that we had approved a series of these supplementals, and this extends the time period for another six months. We have not exceeded the dollars that were originally discussed and budgeted for the land development code.

MOTION: Made by John Mulholland and seconded by Dan Hughes that we extend the Spikowski/Dover contract for the Land Development Code. Passed unanimously.

I. Approval of the Edenfield contract for drainage project

Town Manager Segal-George noted that we had a memo in our packets that outlines what's going on with this contract. Mr. Edenfield, who is in the audience, is the gentleman who prepared those estimates when we originally received the information on the drainage project, and this is in tandem with what the Council requested as to work on those eight drainage projects in the next fiscal year. Dick Roosa has reviewed Mr. Edenfield's contract and in it we will see the project authorizations for each of those drainage studies for quarters 1-8. Mr. Edenfield would be project manager for those projects but will also be doing design work. The rest of the work will be bid out on each one of those projects.

In her memo, Mrs. Segal-George said, she gives an explanation of why we got Mr. Edenfield and why we felt it was appropriate to use him on this contract. And she has consulted with Dick Roosa on this.

MOTION: Made by Anita Cereceda and seconded by Dan Hughes to approve the contract.

Discussion:

Councilman Reynolds asked if Mr. Edenfield was a private person who takes on projects like this and bids them out for groups or government. He'd like to know his connection with these projects. Marsha Segal-George advised that Mr. Edenfield works for Environmental Consulting and Technology, Inc. He was referred by the County as a person who had a contractual arrangement with the County and also, she thinks, had gone through their bidding process. He had the expertise that we needed to look at these projects and figure out what the problems were. He developed the recommendations that were presented to the Council. Under this contract he would be the project manager, helping us go through projects 1-8 to get them completely, then he would help us go to bid and get the rest of the expertise that we need. Each of these projects has things that need to be done for the fix and he would be directing that work.

Mr. Reynolds stated that in essence we are hiring another contractual employee to do a job. He was under the impression that Pam Houck was qualified to do those things. Mrs. Segal-George advised that Mr. Edenfield is an engineer and Pam Houck is not, and she couldn't possibly do this work. Garr Reynolds then asked if that meant that Mr. Edenfield is going to do engineering projects for the people who are doing this work. Mrs. Segal-George explained that Mr. Edenfield is an engineer who will be doing some design, and then as we move toward the fix on each one of these projects, he will be directing the work as we go out to bid for construction and/or survey work, and/or title work.

Ron Edenfield introduced himself and threw more light on his services. He said that Pam

Houck would be his boss.

Vice Mayor Mulholland expressed his belief that we can feel secure that the government light concepts will be carried out here because we have Mr. Edenfield's expertise. He will be protecting the Town even though we're letting these projects out to bid.

Councilman Hughes noted that we do not have a public works department nor do we have a Town engineer. We're contracting with Mr. Edenfield to in effect do the function that those people would do in some municipalities if they had their own staff. Mr. Edenfield would be preparing the specifications to go out to bid on these things.

MOTION: Made by Anita Cereceda and seconded by Dan Hughes to approve the contract. Passed with one nay vote from Garr Reynolds.

J. New Year's Eve report

Town Manager Segal-George noted that we had a memo in our packets that talks about police and fire coverage for New Year's Eve and Y2K and the millennium. The sheriff is going to have 26 deputies on duty that night and they're asking us to pay for ten deputies. The fire department has requested an ambulance and a fire truck on standby in the Times Square area, and they have given us the price for that coverage. These prices are higher than a normal New Year's Eve because of the desire by both the sheriff's office and the fire department to be prepared for whatever Y2K brings. She would want to pay these bills from the Special Events line item in the budget.

Councilwoman Cereceda added that these bills have not existed in any of the previous New Year's celebrations. They are strictly because of this event.

Vice Mayor Mulholland said he thinks it's fine and he applauds the deputies for the good deal that it seems we are getting. He feels we're doing the right thing and that we have to have this degree of safety whatever the cost is.

Councilman Hughes wished to know why this wouldn't be dealt with under the agreement that we have with the sheriff. Ms. Cereceda advised that Capt. Erne really went to bat for us. The first proposal was much higher. The other sheriffs wanted him to charge us for 30 additional deputies just for the Times Square area, and Capt. Erne said to look at the track record here, nothing has happened, we think that we can cover this. In addition to the 26 deputies stationed on Fort Myers Beach, Deputy Dan Levine will be at the traffic light from 5:00 p.m. until 2:00 a.m.

Dan Hughes questioned why the fire department was charging a fee for standby equipment. Anita Cereceda indicated that it didn't seem worth stirring up any ill feelings over this at this late date.

Mayor Murphy said he agrees with Councilman Hughes what's the difference between the equipment sitting down there and sitting in the firehouse. Also, why overtime duty when all those guys are on duty anyhow. The fire district should recognize the fact that this is a community event.

Councilman Reynolds asked why the Town has to pay the fire department for services that the residents have already paid for through the current special tax assessment. This needs to be checked out further. It may be recognized as double taxation. To charge for moving the ambulance and a fire truck a mile rather than have the equipment at the firehouse is ludicrous. The fire department is the Town's fire department and should give service without asking for pay. The firemen will be sitting in the firehouse anyway. Allow them to sit and watch the show at Times Square instead and serve the community at the same time. No extras are needed for this project. Use only the ones on duty. He believes that this item should come before Council for resolution.

Anita Cereceda said that we should anticipate 10,000 people in Times Square, which is two times as much as the amount of people who came to see the fireworks. So, quite honestly, with the traffic that's going to be on Estero Boulevard and the amount of people that are going to be congested in that area, she's grateful that they're all going to be there. And the presence of the fire

department and sheriff's department alone down there will help keep a lid on things. Mayor Murphy said it was the cost that was debatable and it fundamentally goes against the grain for him. Vice Mayor Mulholland said we don't want to cut corners on safety. They got us this time, but maybe next time they won't.

Councilman Reynolds said he had felt the same way about the deputies until he learned they were giving us 10 extra ones and those are the ones we're paying for.

Town Manager Segal-George stated that if the Council didn't want her to pay the fire department, then she wouldn't. Mayor Murphy said he didn't want any bad feelings with the fire department, but if he votes to pay for this, it will be under protest. It's nothing personal with the chief or assistant chief, but he doesn't feel that it's proper. Garr Reynolds would like for Marsha to tell them the way we feel and tell them that it's part of their responsibility, and she said she could do that.

Town Manager Segal-George said that under the ordinance that we passed on the open container, she needs us to designate the Times Square area and Lynn Hall Park as areas that are appropriate to allow open containers for New Year's Eve. Councilwoman Anita Cereceda said she had contacts with 99X and WINK radio, all the TV stations and Rich King, who promised her that they will do promos on the air in the coming 10-12 days, as well as some stories by the news media on the open container. She told the news director for 99X that they may very well get named in a lawsuit when someone refers to the fact that their radio personalities have been saying that Fort Myers Beach has dropped their open container ordinance and that they are reporting incorrect information to their listeners. And this incorrect information may result in somebody getting a serious ticket or perhaps being a bit belligerent because they heard them say we dropped it. She told him that if he had, in fact, taken the time to find out exactly what we had amended in the ordinance, he wouldn't have misreported the information and they've done it several times. They promised her to rectify the situation.

Councilman Reynolds said that he didn't know people were going to be allowed to go into a county park and drink. Councilwoman Cereceda said that the event will be in Times Square but the overflow area is the park. And Lynn Hall Park was requested specifically by Capt. Erne because he said it would be a logistic nightmare to say "Here is the line." The park area will make it much easier on them. Asked if the commissioners have agreed to this, Ms. Cereceda said that the commissioners don't have to agree to it. John Gucciardo stated that this has been discussed with Parks & Recreation and they have no objection to the concept of having open containers in the County Park for that evening. As a matter of fact they agreed that that's probably the right way to go given the sheriff's position. It is his understanding that Parks & Rec will try to do whatever they need to do administratively if we determine that they need to take any action.

The boundaries will then be the pedestrian mall area of Times Square and Lynn Hall Park.

MOTION: Made by Anita Cereceda and seconded by Dan Hughes that the area of the New Year's Eve event that falls under the amendment of the open container amendment would be the pedestrian mall area of Times Square and Lynn Hall Memorial Park. The time would be from noon until 2:00 a.m. Passed unanimously.

Councilwoman Cereceda was asked if she had gotten a rundown of the expenses. She will give us a follow up as soon as the event is concluded with an actual breakdown of costs and what revenue, if any, was generated.

VIII. COUNCIL MEMBERS ITEMS AND REPORTS

Vice Mayor Mulholland said he applauded the efforts of the Town's staff on the mailings to the residents and the overtures to the Civic Association, the Chamber and others. He also

applauds the efforts of Anita Cereceda on her work on the New Year's Eve party and the millennium. He thinks she's done a splendid job.

Mr. Mulholland reported he has met with representatives from the east coast to discuss water taxis. He and Marsha Segal-George met with two captains and they are anxious to set up service in our Back Bay. They are professional and he thinks they have the boats, the fleet and the knowledge to make this work. He also received a letter from the owner of Rusty's Motel regarding water taxis and will meet with him as soon as possible. Water taxis should help us relieve some of the traffic problems.

As previously mentioned, Mr. Mulholland said, he had stopped reading the News-Press. But a resident recently asked him how he could keep aware of what is going on and so he bought a paper yesterday.

Mr. Mulholland also wished holiday greetings to everyone.

Councilman Hughes noted that Mrs. Segal-George had sent publicity on the charette to the Condominium Association of Fort Myers Beach, and they came to a meeting which he also attended. John Gucciardo advised at the meeting that we're asking for possible funding from the Condominium Association.

Councilman Reynolds said he would request that certain council members refrain from criticizing other council members for their views on any given topic. What makes one member feel that he or she has a better approach to a solution to an issue than another member? The thought is ludicrous. Last week a member suggested that a certain council member was being used by the media. The comment was insulting and the innuendo was tossed at him. He can tell us that he was not being used by the media or anyone. He was glad that the media got their hands on the silly issue. He says silly, because that item is adequately covered in the present sign ordinance if one had only taken time to read it: paragraph 8, page 11.

Mr. Reynolds said he also wanted to thank Lorraine for doing a good job on these latest minutes.

He would like to put his name in for Mayor, Mr. Reynolds said, but Mr. Mulholland has suggested that, and so he would ask Council's support for Vice Mayor next year.

Mr. Reynolds wished everybody a Happy New Year.

Councilwoman Cereceda reported on the Chamber Traffic Committee. She stated that she did not enjoy going to these meetings because the discussion was always about how horrible traffic was. She would like the Council to give thought to what we'd really like for her to be doing on that committee, because she is not sure why she's there.

A good committee meeting, Anita Cereceda said, was CELCAB. She hopes that we will take the time to listen to the minutes of the last meeting and compare them to the minutes of previous meetings. The tide has turned and CELCAB was a very unified, forceful group to be reckoned with at the last meeting. They were very positive in their endeavor. They finished going through the management plan and they will have draft copies of the changes that have been made. Ms. Cereceda said she thinks that they're very happy with it and that she'd like to think that the neighborhood is very happy with it. However, Mr. Abrahams seems to think that she is giving the Council a tainted view of what is happening at CELCAB. She would ask us to listen to the tapes of the minutes if we have any questions.

Councilwoman Cereceda said that she is now Chairman of the MPO and did not get sabotaged as she had expected. She has a list of a few changes she is going to be instituting. It should be a dynamic committee, but it is not. It is a rubber stamper and she'd like to change this. They will meet again in February.

Mayor Murphy thanked everyone for their attendance at Jim Newton's funeral where four out of five members came. It was a wonderful ceremony and a very fitting goodbye to a great man of Fort Myers Beach.

Tomorrow, reported Mayor Murphy, there is a County Commission meeting. On their agenda is the issue of parking at Bowditch. It has been strongly suggested that one of us be there

because it appears that this is going to be ramrodded through against our wishes to delay it a little bit. He, himself, won't be able to attend tomorrow and would like for someone else to go who can speak on our behalf. The issue is not whether we want parking or don't want parking, but we want a little more time to consider it because of other developments that have happened. Vice Mayor Mulholland said that he could go. Anita Cereceda said that if she could go, she will also be there. Councilman Hughes said he'd like to remind John Mulholland that we adopted a motion requesting that they delay their decision and he would be armed with that. Councilman Reynolds said that he knows that the Commission is aware of this.

Deputy Town Manager Gucciardo said his understanding of the situation was that after the Council took their action, the Town Manager wrote to then Chairman Judah indicating that there were two issues that we thought needed to be addressed before the project went forward. One was the pending litigation and whether it was prudent to go ahead and put money in the ground given that there was still litigation out there. The second issue was whether or not a parking facility on the Beach would impact their decision to go ahead and put parking at Bowditch Point. And until those two issues were further investigated, it might be the wise thing to not go ahead with construction. That letter was forwarded by Commissioner Judah to County Administration. Mr. Gucciardo thinks that Commissioner Judah's position is that in his opinion he had not heard back adequately from the Administration about those two issues. This is why he is inviting further discussion from the Town tomorrow.

Mayor Murphy said that he finds reorganization meetings at the first of the year to be uncomfortable for him. He has thoroughly enjoyed serving as Mayor this year. It's been a privilege and an honor. He feels that he's served the Town and the Council well. If the Council were to feel the same way and re-elect him as Mayor, he would certainly serve in that capacity again.

Mayor Murphy stated that it was brought to his attention that a certain council member has been dealing directly with some of the staff members upstairs when, in fact, he shouldn't be doing that. He is not giving a warning tonight but would like to restate what our policies are and what our Charter dictates. To quote the Charter: "Policy making is the sole prerogative of the elected Council." Under Prohibitions of the Council it says, "Neither the Council nor any individual member of the Council shall in any manner dictate the employment or removal of any employee other than the Town Manager or the Town Attorney. No individual member of the Council shall give orders to any officer or employee of the Town. Recommendations for improvements in the Town government operations shall come through the Town Manager, but each member of the Council shall feel free to discuss or recommend improvements to the Town Manager and the Council is free to direct the Town Manager to implement specific recommendations for improvement in Town government operations." In other words, any suggestions that we have on the operations of the Town should go through the Town Manager. The Charter further states that "If any council member violates any expressed prohibition in this Charter, he is subject to removal."

Referring to the information that the Vice Mayor received on Rusty's Taxi, Mayor Murphy said he thinks this should be encouraged. He would like for the Town Manager to be provided a copy of the letter and answer the questions in it regarding docking.

Mayor Murphy said he wished all of his fellow council members, the staff and the Town Attorney a very merry Christmas and a happy New Year, as well as happy holidays and a safe and happy New Year to all the residents of the Town of Fort Myers Beach.

Councilman Reynolds advised that when the Town Manager requested that the councilmen allow staff to open their mail, he specifically gave word in writing that he did not want his mail opened. On several occasions his personal mail has been opened. He asked Debbie about it in a very nice, diplomatic way, and she said it was accidental on two occasions. The third time it happened he went immediately to the office manager and explained to her what had happened. He told her also that he does not want his personal mail opened. He stated to her that if this

happens again he is going to the post office, because no one has the right to open personal mail. If his name is on that envelope, that's personal mail. It doesn't matter whether it says Mr. or it says Councilman, that's personal mail. He was not rude to Debbie. He was not rude to Janeen. He did not go to Marsha but he did talk to the office manager, which he thought was the proper thing to do. But did he tell them anything to do or did he threaten them or did he somehow say he was going to fire them or intimidate them in any way? No, he absolutely did not. He's sorry if this was taken the wrong way and it was felt that he did something wrong, but he does not believe that he did anything wrong. He did put this in writing, and since it was mentioned tonight, he thinks he will put it in writing again, just make it a part of the record. Both Janeen and Debbie are very fine ladies who work hard and do a good job, so this has nothing to do with them. He asked Attorney Roosa if he was right in his request. Mr. Roosa said he would not have personal mail sent to the Town Hall. Every document that comes to the Town Hall is a public record. You should tell people not to send personal mail to you here. Mr. Reynolds told Mr. Roosa that he is the expert but that he doesn't believe how that can be possible. Mayor Murphy said he brought the matter up not to reprimand Garr Reynolds about the situation but to remind all of us that it is stipulated in our charter what the chain of command is. We interact with the staff but the orders come down from the Manager.

Councilman Reynolds said he would like for the Council to bring this up and vote on this. Does this mean that he can't feel free to ask about things or discuss things with the employees of Town Hall? He has not done one iota of a thing that would be considered wrong here.

IX. DEPUTY TOWN MANAGER'S ITEMS

John Gucciardo said he had handed out a memo this evening on the update on the solid waste hauling process. This is something that's probably going to be going on for the next couple of months and probably an appeal to the bid process that we're anticipating at this point. He tried to put as many of the pertinent facts as he could in the memo. We should let him know if we have any questions before this goes too much further.

The good news is that we are included in a rather large population segment with the rest of the counties, which makes him feel that we are in a better position than if we had tried to negotiate a hauling contract on our own. The terms and the providers seem to be very qualified and very favorable to us.

A second reminder is that the Public Safety Task Force is still working on a proposed handout. He has given a mark up draft of that to some of us and our input is welcome before finalization of it during a January meeting.

X. TOWN ATTORNEY'S ITEMS

Richard Roosa advised that today the appellate brief was filed on the bond validation case. Robert Donald has done an excellent job in writing the brief and he has copies for us. Mr. Baranack, who is our counsel in Tallahassee, will be filing it with the Supreme Court tomorrow. There is a request for oral arguments and he will be handling them. He thinks we will be very pleased with the product. It is easy to read and to understand and is logical, and he feels that Mr. Baranack has done a very fine job in representing our interests.

Tomorrow is the mediation for the Star Dial case. It will be at 1:00 p.m.

He has had no response from Mr. Humphrey. They rejected our settlement and we have had no response.

XI. APPROVAL OF MINUTES: NOVEMBER 15, 1999 AND DECEMBER 6, 1999

MOTION: Made by Anita Cereceda and seconded by John Mulholland to approve the minutes of November 15, 1999 and December 6, 1999.

Discussion:

Councilman Hughes advised that at the last meeting he had criticized the way Lorraine was drafting the minutes. He does not like for the discussions to precede the motions. And if a motion has been modified, the change should be shown in the final motion. He pointed out several examples that he was displeased with, such as the ones on page 4 of the December 6 minutes and page 5 of the November 15 minutes.

On page 6 of the November 15 minutes, remarks attributed to Councilman Hughes were really the remarks of Attorney Roosa.

MOTION: Made by Anita Cereceda and seconded by John Mulholland to approve the minutes of November 15, 1999 and December 6, 1999 with the corrections noted.

XII. PUBLIC COMMENT

A. JOE CROKER

Dr. Croker thanked the Council, management, staff and attorney for the last time this year for another enlightening and enjoyable Monday night and for allowing him to do what he has to do in front of us. Right now, that is to say Merry Christmas and a Happy New Year.

XIII. ADJOURNMENT

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for action from the meeting of December 20, 1999

1. With respect to the Wilson-Miller supplemental authorization #2 for Old San Carlos Blvd. The question of what the sidewalk material should be was not part of the overall master plan. We need cost data on the material for sidewalks. We also need cost data on the alternatives of not going with the underground utilities.
2. Mr. John Richard is interested in paying for a substantial part of the improvements from Times Square to Third Street, which is about two thirds of the project. However, by just doing part of the project, our unit costs might be increased quite a bit and extend the time that the street is under construction. The engineering firm will be looking at each of these things and coming back to the Council to make these decisions.
3. Town Manager Segal-George advised that the public hearing regarding the Community Resource Advisory Board will be on January 3 at 6:30 p.m.
4. Attorney Dick Roosa advised that he has drafted an ordinance for the Town of Fort Myers Beach Public Works Policy which implements the authority under Chapter 180, which is a public utility chapter for municipalities. Town Manager Segal-George stated that if the Council is okay with this, it could go to first reading on January 3.
5. Town Manager Segal-George said that if the Council wanted to put roads in here and storm water drainage, we could keep them all within Public Works. And it probably would be clearer if we do it that way. Councilman Hughes said he'd like for our attorney and the staff to give us a position on that at our next meeting.
6. Something that could be of value to us in coming to the conclusion to support the sales tax referendum, according to John Gucciardo, is a list of possible projects on the County level and also within the Town. Mayor Murphy asked Mr. Gucciardo to gather that information so that we can make a more informed decision.
7. Charter issues on Lee County's sales tax referendum: Deputy Town Manager John Gucciardo stated that since the referendum is now scheduled and will be going to a vote from the general public, we could direct staff to work in conjunction with the elections \ office to place our charter items on at the same time. This will be in March
8. The Public Safety Task Force is still working on a proposed handout and our input is welcome before finalization of it during a January meeting.