

**FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 5, 1998**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, May 2, 1998 at 6:35 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ray Murphy; Council Members Daniel Hughes, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by Pastor Bob Stuckey of First Baptist Church of Fort Myers Beach.

IV PUBLIC COMMENTS ON AGENDA ITEMS

There was no public comment on the agenda.

Betty Simpson invited all candidates to the FMB Board of Realtors General Membership meeting on October 15 at noon. She asked each candidate to speak for a few minutes and then be available to stay afterward for questions.

V APPROVAL OF MINUTES: SEPTEMBER 14, 1998 AND SEPTEMBER 21, 1998

Motion: Mr. Mulholland moved and Mr. Murphy seconded that the minutes of September 14 be approved as submitted. **Discussion:** Mr. Hughes said that on page 4, line 5, the word should be "cause of" instead of "causative." **Action:** The minutes were approved unanimously as corrected.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the minutes of September 21 be approved as submitted. **Discussion:** Mr. Hughes said that on page 7, Mr. Hughes' statement should be that "he doubted that anything (strike the word "that") could be done to make the residents happy." On page 9, after the public hearing is closed, the minutes state that "He can predict that if there had not been a settlement and joint request", it should have been "joint recommendation." Mr. Roosa clarified that it was a called a "joint request for special master's recommendation." **Action:** The motion carried unanimously as corrected.

VI CERTIFICATES OF APPRECIATION

Jean Matthew of Mainstreet said that she was not able to get the persons to the meeting that should receive the certificates. She said that these same volunteers were also called on to help the small businesses board up before the hurricane, along with other volunteers from the community. She also thanked the council members for their offer of help during the hurricane preparations. She will give the certificates to the volunteers personally.

VII COUNCIL MEMBER ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy had no items to bring before the Council.

B GARR REYNOLDS

Mr. Reynolds reported that they have put plywood over the windows and doors at the Sanbar. He thanked whoever is responsible.

C DAN HUGHES

Mr. Hughes distributed a letter that was addressed to Arden Arrington from Irvin Solomon, a professor at FGCU. Mr. Solomon has requested the intern coordinator at FGCU to find out

whether they could put interns from the history department at the Cultural Center at the Mound House. Mr. Hughes said that he thinks it is a great idea.

D JOHN MULHOLLAND

Mr. Mulholland read a prepared statement in response to the Civic Association's letter to him of October 1 that responded to his letter of September 17. He said he is concerned by the response. He had requested a mailing list of the membership so he could correct the inaccurate statements that were in the Tidelines, and also asking that all candidates be allowed to be treated the same in the newsletter. Recent Tidelines only published information on the same four candidates while attacking candidates not invited to speak. The response refused to give the list and did not address the issue of the unfair treatment of the other six candidates. The Civic Association also questioned his honor and ethics. He said he has a lifelong reputation of honesty and integrity in his personal life and business career. The Tidelines is the only source of information for many people in the town. How could it be considered unethical of him to try to get accurate information to people who are his constituents? The council is under attack. They have been called liars and lawbreakers, and their intelligence has been questioned. He will be sharing his copy of the Tidelines with the other council members. The Civic Association was once a responsible and trusted organization and the newsletter used to be informative. Recent issues have been below their former standards. The only remedy is to correct the inaccuracies in a letter to the residents of the town.

He talked about a memo from Mr. Roosa on Responsible Growth Management vs Lee County. The memo said that the South Florida Water Management District would protect our interest concerning water quality. He wants us to intervene. He disagrees with the attorney's findings that we will be protected by the SFWMD. Estero Bay is the town's jewel and we should be heard on this issue. He asked the other council members to back him in asking to intervene in this suit.

Mr. Roosa said in the memo that we do not have standing in order to intervene and were not a party to the original hearing. Sanibel has addressed that problem with regard to development along the Summerlin corridor by having an interlocal agreement that, in effect, makes them a party. He does not believe that we can intervene in this litigation because we do not have standing. That is a statutory right. In future actions we can assure it by having an interlocal agreement with the county so that any time they have a development that would impact us, we would be notified and allowed to participate. It is for future applications only and will not help us gain standing in this suit. Mr. Hughes asked about the possibility of appearing as amicus curiae. Mr. Roosa said that would put us in conflict with the county. Mr. Hughes said that is not necessarily bad. Mr. Roosa said there is another statute that says that if we have a conflict with the county commissioners, we will meet with them to attempt to resolve the conflict prior to litigation. It might not be a bad idea to meet with the county commissioners on this issue. Mr. Mulholland said that sounded like a good step. Mr. Hughes said he feels that Estero Island is more affected than Sanibel. What can we do to help with this litigation before the court? He would like to see the town proceed with the interlocal. Mr. Roosa said he would work on the interlocal agreement. It should cover all of Estero Bay and also some distance inland. Mrs. Segal-George suggested we include the Summerlin corridor also.

Mr. Mulholland congratulated the town staff on their outstanding preparations to protect the town from Hurricane Georges. He commended the Deputy Town Manager in particular for assuming the leadership of interfacing with the EOC, sheriff and fire district. He moved that a plaque be presented to each of the staff members recognizing their efforts and showing their gratitude.

He reported that the Back Bay cleanup will be on November 1. The MRTF will be involved. After the cleanup there will be a barbecue at Fish Tail Marina. They could use more volunteers.

He also mentioned today's New Press and the study of sea grass at Tarpon Bay. We have the same problem in Estero Bay. Ours is probably from careless jetskiers and boaters. He invited Terry Cain to speak to the council. She is a member of the MRTF and is in charge of education program and is chairing the Back Bay cleanup. Ms. Cain said there are two events she would like the council to be aware of. On October 19 there will be a workshop in Ft. Myers on Eco Heritage tourism. All are invited to attend and the workshop is free. The second event is the fifth marine cleanup on November 1 from sunup until noon. People are also welcome to clean up the bay near where they live. Keep Lee County Beautiful has offered the barbecue afterward for the volunteers. She asked the Town to become a sponsor. She recommended a \$500 donation. It is an educational event. She said they also need people on land as well as on the boats to offload the litter.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that \$500 be donated as sponsorship for the event. **Discussion:** Mr. Reynolds asked if they needed the money immediately. He would like the

council to consider this at a later meeting. **Action:** The motion carried unanimously. The check should be made out to Keep Lee County Beautiful.

E ANITA CERECEDA

Mayor Cereceda gave a public commendation to Mrs. Segal-George and John Gucciardo in particular, but also Ron Himmelmann and Peggy Salfen for their efforts in preparation for the hurricane. We have an efficient and well-working staff. We learned a great deal from the planning.

VIII PUBLIC HEARING: ORDINANCE ESTABLISHING CULTURAL AND ENVIRONMENTAL LEARNING CENTER ADVISORY BOARD

Mayor Cereceda read the titles and opened the public hearing.

A JEAN MATTHEW

Ms. Matthew asked if the Mainstreet director could be an ex officio member of the committee. The council was not opposed.

B BETTY SIMPSON

Ms. Simpson asked if this board would be partially made up of the old steering committee members. Mrs. Segal-George said Mr. Arrington is asking all the old members if they are interested in serving. They will have to be formally appointed by the council.

The public hearing was closed.

Motion: Mr. Murphy moved and Mr. Hughes seconded that the ordinance be adopted. The vote was as follows: Mr. Murphy, aye; Mr. Reynolds, aye; Mr. Hughes, aye; Mr. Mulholland, aye; Mayor Cereceda, aye. The motion passed unanimously.

IX FIRST READING: ORDINANCE AMENDING THE PARKS AND RECREATION ORDINANCE

Mayor Cereceda read the titles. The ordinance will be set for public hearing on October 19.

X FIRST READING: ORDINANCE AMENDING THE LAND DEVELOPMENT CODE ON MOBILE VENDORS

Mayor Cereceda read the titles. The ordinance will be set for public hearing on October 19.

Mr. Hughes said that the title mentions farm produce stands, U-Pick operations, etc. Wouldn't it be appropriate to eliminate those references that do not apply to the island? Mr. Roosa said the title of Division 16 could be changed. Mrs. Segal-George said the whole LDC is being changed. She doesn't know the difference in the definition between roadside stand and farm produce stand. But that will all be cleaned up in the new LDC.

XI DRAFT ORDINANCE: AMENDING THE OPEN ALCOHOLIC BEVERAGE CONTAINER ORDINANCE

Mayor Cereceda read the titles. First reading will be October 19.

Mr. Roosa explained that a reference in our ordinance applied to the wrong section (definitions). The county court has ruled that there is no violation of definitions so there can be no violation. He also passed out an emergency ordinance. Adopting the emergency ordinance will keep our ordinance in force until final public hearing of the regular ordinance. (The emergency ordinance gives us 60 days.)

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the emergency ordinance be adopted. Mr. Murphy, aye; Mr. Reynolds, aye; Mr. Hughes, aye; Mr. Mulholland, aye, Mayor Cereceda, aye. The motion carried unanimously.

XII RESOLUTION SUPPORTING AMENDMENT 5 (CONSERVATION AMENDMENT)

Mrs. Segal-George said that we have been asked to support this resolution since we have received a grant from the Florida Communities Trust. Without this, the money would not have been available for us to receive the grant.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the resolution be adopted. **Discussion:** Mr. Hughes said in addition there should be some publicity about this amendment. Let the electorate know about it because it is important. Mayor Cereceda said she would make sure it gets some coverage. **Action:** The motion carried unanimously.

XIII OLD BUSINESS

A CONTRACT WITH LAWLER'S LAWN MAINTENANCE

Mrs. Segal-George said that the memo explains the differences between last year's and this year's contract. Mr. Reynolds asked about the amount for mowing the Mound House. It was clarified that it is not included in the contract amount. Mr. Reynolds asked if the merchants are contributing toward the maintenance of Times Square. Mrs. Segal-George said they will be as soon as the MSBU is put into place. The council will be deciding the percentage of how much the town will pay and how much the merchants will pay. Mr. Reynolds said he has a problem with the whole island supporting this one business location. Mrs. Segal-George said that when the council voted to close the square, we prevented a number of merchants from having any way to remove their garbage. Mr. Reynolds asked, when Old San Carlos and Crescent are improved, if maintenance there will be a part of this contract also. Mrs. Segal-George said that that will have to be negotiated in a new contract. The area down to the Lani Kai only gets maintenance on the sidewalk and the palms. Mr. Hughes asked about the Mound House maintenance. He asked if part of the contract could be severed if he does a good job on one part and not a good job on another part. Mrs. Segal-George said yes. Mr. Hughes said he would like to see a statement in the boilerplate contract that these people are independent contractors and not employees of the town. Also in section 2 (Contractor's Personnel), it provides that they shall maintain workers comp and liability insurance for each of their employees. In Section 11 (Liability) it provides public liability insurance in an amount and with an insurer acceptable to the owner. Normally we should require a similar provision under his workers comp and liability coverage, that that insurance be in an amount and with an insurer acceptable to the owner. There were no objections to the changes being made to the contract. Mr. Reynolds said we started out at \$26,000 and it is now \$42,000 plus for maintenance. Mrs. Segal-George said the increase is because Times Square is maintenance-intensive. The work specifications have been increased, such as sealant to help prevent staining of the pavers. When the square doesn't look good or clean, we get calls from the residents. The increase is because of the increase in number of hours required. There was no increase in the hourly wage. Mr. Reynolds said the coverage is good by Mr. Lawler, but he is concerned about where the money is coming from. The parking meter funds should go into the general fund to be used as needed. Mrs. Segal-George said the council directed the parking meter money in that direction but it could be changed if they wished. Mayor Cereceda said Mr. Lawler is very dedicated to the town and is a very hard worker. During the hurricane preparation he helped out in getting Times Square and the Mound House secured. He is very conscientious. She said when the town agreed to take over the Times Square area, they basically agreed to create a park. It created incredible burdens for the merchants in the area. We were able to come up with some agreements to be able to go ahead with the project. Everyone is thrilled with the project. It put a facelift on the community and it is not strictly for the businesses in the community. We are not subsidizing private businesses. The money that was spent to create the area, was money that was collected before we became a town. We have created an area that every single person on the island can enjoy. Mr. Murphy echoed the Mayor's sentiments. A lot of the money that is collected is used to offset the expenses incurred. The majority of the work Mr. Lawler is doing is on public (town) property. This is not a big benefit to the merchants except in the improvement of the whole area. It has also been the impetus for improvement outside of the area. Mr. Mulholland said if you do an analysis of the budget, the only dollars spent are money for the maintenance. All other dollars are for the benefit of the residents. Mr. Reynolds said he is not talking down Times Square. He is very proud of the project. But we are spending taxpayer money there. In the future the cost will be shared, but he does not look for the money that has already been paid for maintenance to be paid back.

Motion: Mr. Mulholland moved and Mr. Murphy seconded that the contract be approved with the changes suggested by Mr. Hughes. All voted in favor of the motion except Mr. Reynolds. The motion carried.

B DO THE RIGHT THING PROGRAM

Mrs. Segal-George said she needs to know if we want to continue with the joint participation in the program as we did last year with the Chamber. Mayor Cereceda said it is a tremendous program and one of our beach students has been honored at their annual banquet. There was no objection to continuing with the same amount that we contributed last year. Mr. Hughes said he has a concern about the general policy. This would come out of community services. Is that the intent that it would be available for local not-for-profit and charitable organizations? Mrs. Segal-George said that the money is spent at the council's discretion by request. We have also sponsored the high school graduation party. Mr.

Hughes said that he is on some foundations and they have criteria that people who are seeking money must meet. There should be some sort of coherent policy about how community services money should be distributed. Mr. Mulholland said it is a good idea and asked if Mr. Hughes could help in establishing those criteria. Mr. Hughes agreed to work on something for the council to consider. All the requests are from worthy causes, but we have to be careful as a municipality about giving tax funds to charitable entities.

Motion: Mr. Mulholland moved and Mr. Murphy seconded that the town continue in the program at the same level as last year. The motion passed unanimously.

XIV TOWN MANAGER'S ITEMS AND REPORTS

Mrs. Segal-George said that her office and the fire department have been working for months to get the Sanbar secured. They have now agreed to board it up and also to secure the pool. The fire department was very helpful. They wrote a series of violations that helped convince them to board up.

Mr. Hughes asked about the memo from Mr. Gucciardo about hurricane operations. Mrs. Segal-George said she has a list also and they will compile them into another list and probably have a workshop on the subject.

XV TOWN ATTORNEY'S ITEMS

A PRIMEAU LITIGATION VS LEE COUNTY

Mr. Roosa said not long after the completion of the Times Square project, Mr. Primeau filed a lawsuit against Lee County (inverse condemnation action), saying that the county built a trolley stop and roadway on his property and took the property without compensation. The county takes the position that they have a license to do what they did. They had asked the Primeaus for an easement, but they wouldn't give one, but they agreed to give them a license. The license had conditions. But it was never presented to the county commission or the town council. Despite that the county went ahead with the project. Their position is that they had an oral agreement, or through some equitable doctrine such as estoppel that they partially performed and therefore were justified. It seems to Mr. Roosa that based on the complaint, there is a legitimate claim for damages. The mediation agreement provided for compensation and also the moving of the trolley stop and the providing of 3 spaces on the town right of way or the payment of \$15,000 for the parking spaces. Both those issues are clearly within the jurisdiction of the town because it is town property. When the county turned it over to the town, they turned over the trolley stop. The contractor's documentation includes a blueprint which was turned over to us. They turned over to us the pavers on the road right of way also. Tom Wright, the assistant county attorney, has asked that the council authorize those three spaces on public right of way to save the county \$15,000 and also that they approve the moving of the trolley stop. The alternative place is closer to the water and down Estero a short way. The result would be to move the bollards forward so it would impact the traffic flow. Mrs. Segal-George said the circular turn-in would also be reclaimed by Mr. Primeau and that would affect the access to the Top O Mast. Mr. Mulholland said the county has the burden, yet they are asking us for 3 additional parking places. We already gave Mr. Primeau some parking spaces because he allowed the CRA project to go through. Now he is asking us to move the trolley stop. Why are we in a no-win situation? Mr. Roosa said that the county is just asking as an accommodation. But they are not offering anything in exchange. Mr. Mulholland said he understands that the agreement calls for \$55,000 in damages plus attorney's fee or he will take his land back. Mr. Roosa said the land will belong to the public. Mr. Primeau has asked the court to determine that a taking has occurred. Once the Court has agreed that a taking has occurred, then it is just a question of compensation. Right now it is private land subject to an oral license. When we took it, we understood that all the easements had been acquired. This one fell through. The county CRA dropped the ball. Mayor Cereceda asked if the county commissioners have the authority to make that settlement. Mr. Roosa said it is his position that they have the authority to pay, but not to grant parking spaces on our right of way or to move the trolley stop. Mayor Cereceda said we need to communicate that to them. Mrs. Segal-George said this was supposed to go before the county commissioners tomorrow but Mr. Roosa asked them to postpone. They postponed one week. In one week they will hear their county attorneys present this to the commissioners and ask them to agree to it. Mr. Hughes said it seems we are being pressured by the county to bail them out when they messed up. He is confused about who has title to what. Where does Mr. Primeau's fee title begin and end, what is public right of way, where is the area of the license agreement that is in controversy? How will this affect our chance to have a pedestrian overpass or will it cost more to build because of this? He does not feel comfortable agreeing to what the county is asking. Mr. Roosa said those are legitimate issues. It is not just a matter of moving the trolley stop

because it is part of a total plan. He will prepare a letter to the county commissioners stating that with regard to their paying compensation, we have no concern. But the movement of the trolley stop and the granting parking spaces is another issue. Mr. Hughes said accessibility to the Top O Mast is also a concern. They have already lost the street in front and they have asked for signs, etc. Mrs. Segal-George said there would be interesting liability if they cut off access to that parking lot. Mr. Reynolds asked if that area is a 50-foot right of way. Mr. Roosa said he was not sure. Mr. Reynolds said you can't claim public right of way. Mr. Roosa said they are claiming a triangular piece of land in front of the trolley stop and it is pretty well assured that Mr. Primeau owns that land. Mr. Roosa will draft the letter and be at the commission meeting to make sure they understand our position.

XVI PUBLIC COMMENT

A SANDI SUTER

Mrs. Suter said that the residents have gone without sidewalks on the south end because the funds were diverted to Times Square. She understands the sidewalks will be coming later this year due to a federal grant.

She directed her next comment to Mr. Mulholland. She said there is a blatant attempt to malign the Civic Association. In the September Council meeting, Mr. Mulholland read his letter to the Association, yet he only paraphrased the Civic Association letter to him and perpetrated a false image of the Association. The Civic Association has no responsibility to print any statement from anyone they do not choose to. They are a private organization and mail issues only to their membership. In October they will endorse Cherie Smith, Garr Reynolds, Lena Heyman and Lorrie Wolf. Mr. Murphy objected that Mrs. Suter was out of line because this is not a political forum. Ms. Suter said they have every right to endorse whomever they please. That was carefully explained in the letter that was not read tonight, but was paraphrased. The membership list is confidential and will not be distributed. They have been publicly labeled as irresponsible. They have printed the truth for years and have been the only source of total truth for many of their citizens. In light of his misrepresentations of the Association, she challenged him to read the letter.

Mr. Mulholland read the letter that was dated October 1 responding to his letter of September 17. It stated that they would not be giving him the membership list. It stated that they are not a PAC, but a private organization. Although they have not yet publicly endorsed candidates, it is their intention to do so. As a private organization mailing only to their own membership, they can endorse candidates without becoming a PAC. They have advised their attorney that Mr. Mulholland is distributing the Tidelines without the permission of their directors. It also said it appears he is trying to intimidate the Civic Association with his demand to respond within 5 days. As always, any member of the Civic Association can submit a letter for approval and publication. It also said that if the Civic Association no longer expresses his views, it would be more honorable for him to resign. They said that to remain a member so he can harass and monitor them, appears to be unethical.

Mr. Hughes said there is inconsistency between what Mrs. Suter said and the letter said about being a private organization and that their newsletter is only for the benefit of their members. In the minutes of September 21, Mr. Reynolds stated that the newsletter is an attempt to keep the public informed and he doesn't see anything wrong with it. Those minutes were read and approved without change.

B JANE CUNNINGHAM

Ms. Cunningham is a permanent resident of Harbor Pointe. She noticed the similarity of the concerns about the Primeau case with the building restrictions at Bay Beach. The county has been making decisions on unclear or ambiguous information, then throwing it to the town council to straighten out. She asked if it is OK to copy a letter to the council that she has received. Mr. Roosa said it is OK with the writer's permission only.

She also asked, regarding the Lawler contract, at what time the percentages would be decided. She asked if it is correct that up until then, the town is paying the full amount.

C LENA HEYMAN

Ms. Heyman asked about the 60-day emergency ordinance regarding alcoholic beverages. She asked if there is anything in there where the town could declare that alcohol will not be served in case of an emergency such as they did on Sanibel during the hurricane. Mayor Cereceda said that this is only to keep our ordinance in effect until we can fix a technicality in our ordinance. She said that the type of event she is talking about was mentioned in the memo from Mr. Gucciardo and that this would be addressed later.

D BETTY CRAWFISS

Ms. Crawfiss thanked Mrs. Segal-George for keeping the town's utilities going during the storm.

Mr. Murphy said Mrs. Suter sneaked in her slate of candidates during public comment. He finds that improper. He would like to have that stricken from the minutes. Mayor Cereceda suggested that since it is important to keep the minutes reflective of the meeting, if there is no objection, they will have a policy that the podium will not be used for political endorsements. Mr. Reynolds said he agrees only if a council member does not initiate the problem. Mayor Cereceda said that Mr. Mulholland did not initiate a political endorsement, he initiated a response to a letter. Mr. Reynolds said we should not give a rebuttal to public comments. Mr. Hughes said you can't tell an elected official that they can't respond to something.

XVII ADJOURNMENT

The meeting adjourned at 8:24 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary.