

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
NOVEMBER 2, 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, November 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; Deputy Town Manager John Gucciardo; 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 Tom Snapp of St. Peter Lutheran.

**IV PUBLIC COMMENT ON AGENDA ITEMS**

There were no public comments on the agenda.

**V APPROVAL OF MINUTES: OCTOBER 15, 1998 AND OCTOBER 19, 1998**

**Motion:** Mr. Murphy moved and Mr. Mulholland seconded that the minutes of October 15 be approved as submitted. The motion passed unanimously.

**Motion:** Mr. Mulholland moved and Mr. Murphy seconded that the minutes of October 19 be approved. **Discussion:** Mr. Hughes said that on page 4, item D, 4<sup>th</sup> line down, it should read "Mr. Mulholland has". Four lines further down, it should read "help in mailing" instead of "meeting". Near the end of the paragraph, after the word "absolute" should be added the word "defense", and the phrase should read "that there was slander, that there is an absolute defense in law to slander, and that is truth." In the following paragraph, three lines from the bottom the first word should be "where" instead of "were." **Action:** The minutes were approved unanimously as corrected.

**VI COUNCIL MEMBER ITEMS AND REPORTS**

**A RAY MURPHY**

Mr. Murphy said Monofilament Madness was a great event. They had a lot of fun and accomplished much. He thanked everyone who came out to help clean up the back bay.

**B GARR REYNOLDS**

Mr. Reynolds commented that the Halloween event at Bay Oaks was also a very good event.

**C DAN HUGHES**

Mr. Hughes asked Mr. Roosa if he will be addressing the status of Moss Marine during his comments. Mr. Roosa replied that he will not, as there is nothing new. Mr. Hughes asked if he will be addressing the Primeau case. Mr. Roosa said that there will be a meeting on Thursday on that case.

Mr. Hughes asked if he could attend the meeting of the Southwest Florida League of Cities. He was told that he could attend. He also mentioned that their directory contains the name of the old assistant town manager and should be changed. He asked if there is any follow-up on the Campbell situation adjacent to Lani Kai. Mr. Gucciardo said that the next day code enforcement talked with the two property owners, with Lani Kai and with Rick Klontz of Lee County Solid Waste. Mr. Hughes thanked Mr. Gucciardo for the excellent summary on our investment situation. It gave a lot of information and made some recommendations. He asked if that would be put on a future agenda. Mr. Gucciardo said there is no timetable and they were not necessarily going to put it on the agenda. He is still in the process of getting some feedback from other participants in the League of Cities program. Mr. Hughes said our investment policy is set by charter and by ordinance. Can Mr. Gucciardo make changes in investments without town

council action? Mr. Gucciardo said he believes you can, but they have not done that in the past. He said the memo was looking for input from the council. He has also given it to Mr. Roosa for comment.

**D JOHN MULHOLLAND**

Mr. Mulholland agreed that the investment memo was excellent, but he requested that it be put on the agenda in the near future so they can discuss the options. Mr. Mulholland said that Estero Bay, the jewel of our town, received a good cleaning on Sunday. Terry Cain worked very hard to organize the cleanup and he thanked her. Approximately 175 people took part, 125 lunches were served, and just under 5000 pounds of marine debris was bound and disposed of. Also three derelict boats were found and disposed of. He thanked Mrs. Cain and all who volunteered.

He said that he regretted having to bring up the next matter, but he feels it is of utmost importance. On Thursday, he and his wife mailed their resignation from the Civic Association. That afternoon they received a special election edition of the Tidelines. On the front page was a copy of a letter addressed to the state Commission on Ethics signed by Ted FitzSimons. It contained charges against Mr. Mulholland that were without merit. He said he was bringing it before his colleagues because the "Town mayor" was also mentioned and it also mentions "at least three sitting council persons." Mr. Reynolds objected that he thought the council agreed not to bring up anything political. Mayor Cereceda said this is not political because it involves charges made against Councilman Mulholland. Mr. Mulholland read from the letter: "According to the October 19 meeting, at least three sitting council persons participated in the distribution of the referenced letter [that Mr. Mulholland mailed out] but supposedly never discussed its contents but all three had read the document." So three members of the Council are under question to the Commission on Ethics. He thinks this is bad for the Town and council and everyone concerned. The Commission on Ethics takes violations very seriously-- you can be removed from office, fined or jailed. He is sorry we have come to this level. Mr. Roosa has advised him that Mr. FitzSimons may have committed a misdemeanor in the first degree. Florida Law 775.082 says that "any person who willfully discloses or permits to be disclosed his or her intention to file a complaint, the existence or content of a complaint which has been filed with the commission, or any document, action or proceeding in connection with the confidential preliminary investigation of the commission, before such complaint, document, action or proceedings becomes a public record, as provided herein, commits a misdemeanor of the first degree." The Civic Association may also be guilty of a conspiracy, which is also a misdemeanor. He takes no joy in telling them this. He asked that people let this come to an end. Let the Council get back to the urgent business of the town. He will volunteer to talk to the membership of the Civic Association if they would invite him, if it would help clear things up.

**E ANITA CERECEDA**

Mayor Cereceda echoed the comments about the Back Bay cleanup. It took the cooperation of many different groups, including the Pilot Club, and the Leadership Lee County class. The personal watercraft and parasail vendors practically shut down their businesses while they volunteered their machines and gas. They picked up tons of trash. The effort was a good indication of how much we value our back bay. She suggested that we do it more than once a year, perhaps quarterly.

**VII PUBLIC HEARING: ORDINANCE AMENDING THE OPEN ALCOHOLIC BEVERAGE CONTAINER ORDINANCE**

Mayor Cereceda reminded the public that this is just a technicality to correct a minor error in the ordinance. She read the titles and opened the public hearing. Mr. Roosa clarified that in the original ordinance, the paragraph that imposed the penalty was a penalty on the definition paragraph. This amendment removes the definition from being a violation and puts it in the correct place. There being no comment, the public hearing was closed.

Mr. Hughes said that this is just changing a section number, but under our procedures, it had to go before the council three times. Isn't there some way to amend technicalities without this whole procedure? Mr. Roosa said that this ordinance imposes a criminal penalty so it must be done this way even though it seems like a technicality. Otherwise we could have amended it more easily.

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

**VIII NEW BUSINESS**

**A REQUEST TO HOLD SWIM LESSONS AT MOUND HOUSE**

Mrs. Segal-George said that Kay Sager Vogel approached her about wanting to offer swim lessons at the Mound House. The Town is keeping up the pool anyway and will continue to until we decide what will happen to the pool. This would allow the residents to take advantage of Red Cross programs that we do not currently have on the island. Mrs. Vogel said we have not had Red Cross lessons open to the public. Her husband is also a Certified Water safety Instructor. She said the pool is not heated so it will not be suitable for lessons in the winter. Adults who do not know how to swim are usually too embarrassed to have lessons at the condos. The other program she will offer is Basic Community Water Safety. It is virtually for anybody, and you do not have to have any aquatic skills. It covers many aspects of water safety including bug bites, snake bites, CPR, first aid, etc. That class is mainly classroom, so it is optional to enter the water. Most sessions could be held in the Mound House if that is agreeable. Mayor Cereceda asked about liability. Mrs. Segal-George said the house and the town are covered already and that the Red Cross assumes some liability. She said that we can work out the details, but first she needed to know if the town would even be interested in this before she explored it further. It is true that there would be some liability if something happened there. Mr. Hughes said he thinks that our public liability policy would probably be sufficient without a rider. Mr. Reynolds felt that any extra activity there would have to be cleared with the insurance company. He asked Mrs. Vogel if she has done swimming instruction at the condos. A lot of them have heated pools and they might be interested. She said she does private lessons there, but they are not willing to bring in the public because of liability. Mr. Murphy asked how Arden Arrington feels about it. Mrs. Segal-George said we can work around the schedule there because there is not much activity there yet--mostly just writing grants and the Christmas program. She thinks it would be good to have something happen there that would be of value while we are in the planning stages. Mr. Mulholland asked if the town will make any money to offset the cost of maintenance on the pool. Mrs. Vogel said the cost to the residents would be the same as is charged by Lee County, and that the Red Cross takes 20% of that. A portion will go to the Build-A-Pool Foundation, but she doesn't know how much because she doesn't know how much response she will get to the lessons. Mrs. Segal-George said that we are maintaining the pool now anyway. She would talk with Mrs. Vogel about the exact costs. It is costing us about \$70 per month to maintain the pool. Mr. Murphy said it seems that the majority of the lessons will be classroom work this winter. Mrs. Vogel said that with the cooler nights, the temperature of the water will not be suitable for children soon. Mayor Cereceda asked how she would get her customers. Mr. Vogel said she would advertise in the Observer and Bulletin. Mr. Hughes said it is an excellent program and should be encouraged.

**Motion:** Mr. Hughes moved and Mr. Murphy seconded that Mrs. Vogel be allowed to offer lessons at the Mound House. **Discussion:** Mr. Reynolds said he thinks it is a good idea but he is worried about the liability. He also thinks some money should go toward the operation of the pool. **Amended Motion:** Mr. Hughes said he would like the project approved subject that it will not go into effect until we have a formal outline or agreement setting forth precisely when lessons would commence, what would be the cost, what portion would go to the Pool Foundation, etc. Mr. Murphy agreed to the amended motion. **Discussion:** Mrs. Vogel said the amount she would give to the Foundation would depend on how many students she would have. She would be willing to have a formal proposal, but it needs to be advertised first. Mr. Murphy also wanted to know when the agreement would end. Mrs. Vogel said that probably November is the only month she will be able to use the pool, but the other program could go on all winter. Mr. Murphy said he was speaking more about a termination clause in case we didn't want her giving lessons there any more. Mr. Hughes had no objection to getting the project started and not waiting for another meeting, but he wants it to be a clear-cut proposal. Mrs. Segal-George said she understood it would only be through December. If they want it to continue further, they could add the formal proposal. Mr. Hughes withdrew his previous motions.

**Motion:** Mr. Hughes moved that the council approve the commencement of the Red Cross program through the end of the calendar year in accordance with the proposal set forth in the memo with the additional proviso that our current insurance is adequate and would not require any additional insurance. Mr. Murphy seconded the motion. The motion carried unanimously.

## **B PUBLIC SAFETY TASK FORCE SURVEY**

Mr. Gucciardo said the Council has been provided with the final version of the survey. It is not just an exercise of rereading--they would like the council to fill it out and return to him. The Task Force members will be out at the polling places on Tuesday to give them out to all the voters. They have also

made a mailing to all the absentee voters and the survey will be available around the island with convenient drop-off boxes. A criminal justice class will compile them and put the information in a usable form.

**IX TOWN APPOINTMENTS: CHARTER REVIEW MEMBERS**

Mr. Gucciardo said that all of the original charter review members have agreed to serve again: Andy Priem, Joe Croker, Ilene Barnett, David Smith, and Dan Parker.

**Motion:** Mr. Murphy moved and Mr. Reynolds seconded that the original members be appointed to the new commission. **Discussion:** Mr. Hughes said he thinks that something as important as an amendment to the charter should be a larger group. Mr. Mulholland disagreed. He said that the work that the original five members put out was incredible and that they also had input from the Chamber review committee. What they produced was good. The problem was that the council did not get all the changes made that they suggested. Mr. Reynolds agreed. He feels that they are very well-versed on the charter and they gave a good report. Mr. Murphy said we are back because of few outstanding items. He thinks these people have a good handle on those issues. But he thinks there will be a time in the future when we will want to consider more far-reaching changes than these small items. When it comes time for that, he agrees that the more people on the committee to bring fresh ideas, the better. Mr. Gucciardo said he assumes they will follow their previous procedure, which will be to have numerous public meetings with public input. Then everything will come back to the council with an opportunity for public input then. Mayor Cereceda said she would like to see a larger group, but this would help eliminate as much confusion as possible. **Action:** The motion carried unanimously.

**X TOWN MANAGER'S ITEMS**

Mr. Gucciardo said that he has prepared a grant application that grew out of our preparations for Hurricane Georges. During the hurricane, the staff discovered a number of concerns, one of which was that we were probably vulnerable in case of power outage on the island. There was a lot of information that went through Town Hall that would not be able to go through Town Hall if the power went out. This grant is due on November 9. If funded, the grant will allow permanent generators at Town Hall and the Mound House. One of the criteria for grading the grant application is commitment by elected officials to participate in this. The bulk of the money we are asking for is from the state for the two generators as well as to have them installed. Our in-kind match is a commitment on the part of the Council to direct staff to participate in the grant administration, overseeing the construction project, and hiring on a contract basis labor to keep the generators maintained throughout the year so they will stay usable if and when an emergency occurs. The grant is for \$36,000 for equipment, but the entire grant package is about \$42,000, with our in-kind being about \$6000. The only cash outlay from the town would be the advertising for the bid process for the contract for the generators.

**Motion:** Mr. Mulholland moved and Mr. Murphy seconded that the staff be directed to participate in the grant administration. **Action:** The motion carried unanimously.

**XI TOWN ATTORNEY'S ITEMS**

Mr. Roosa reported that he and Mrs. Segal-George will meet with Mr. Primeau and his attorney and the county attorney on Thursday. This meeting comes out of the county commission meeting where they said that all the parties should get together.

**XII PUBLIC COMMENT**

**A BILL PERRY**

Mr. Perry wanted to thank the council, staff, and the jet ski and parasail vendors, Mid Island Marina, and Fish Tale Marina and Terry Cain for the successful back bay cleanup.

**B RAY MERTENS**

Mr. Mertens said that during the election process, it has appeared to him that our staff is in jeopardy annually. He feels that when you have good people, you should do something to put their lives at ease and consider a longer-term contract so they aren't subject to whim. They have family and bills and careers. He questioned how long he would stay himself under these circumstances. If it is OK with the charter, he would like to see that change. They could still be removed for cause, but as a citizen, he doesn't want them to worry about retribution if the wrong person or the right person wins. Political hacks don't work. We need to protect good people.

**XIII ADJOURNMENT**

The meeting was adjourned at 7:25 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary