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LORRAINE CALHOUN

FORT MYERS BEACH

TOWN COUNCIL MEETING APRIL 22, 1996

NationsBank, Council Chambers 2523 Estero Boulevard

FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Monday April 22, 1996, at 6:35 P.M. by Anita T. Cereceda, Mayor. Present at the meeting were: Anita T. Cereceda, Mayor and Council Member: Ted Fizzimons. Vice Mayor and Council Member; Council Members Ray Murphy and Garr Reynolds; Marsha Segal-George, Town Manager, and Attorney Richard Roosa.

Excused Absence from Meeting: Council Member Rusty Isler.

II PLEDGE OF ALLEGIANCE AND INVOCATION

All assembled recited the Pledge of Allegiance to the flag and Mayor Cereceda gave the invocation.

III PUBLIC COMMENT⁶ AND INQUIRIES

A. FLIP HARBY

Mr. Harby stated that he was disturbed regarding future interlocal agreements. Once the one ending September 30th that we have already paid is diminished, what about those that are going to provide services for the residents of Fort Myers Beach? He would sincerely hope that the interlocal agreements for the future are also being as aggressively sought as the ones we will be discussing tonight.

B. ELIZABETH CUTLER

Ms. Cutler said that as a taxpayer and a resident of the south end Fort Myers Beach, she would like to state her objections to the popular suggestion that the sidewalks be eliminated from the CRA project. In her words, the rest of the project is the beautification of the Times Square area and it is mostly fluff, designed to benefit the merchants in that limited area. The only part of the project that directly impacts public safety is the sidewalk project. It is redundant to say that Estero Boulevard is the

most congested and dangerous street in Leo County. We all know that pedestrians and bicyclists who travel on the south end are just inches away from the cars and trucks that speed dangerously across the little white line that separates them. There have already been fatalities. Lighting is very inadequate and at night safety is even more critical. The walkways along the street are very narrow because of the drainage ditches on both sides. If the issue today were one deciding between the Times Square project and the sidewalks up and down the entire island, is there any doubt which would be the priority of the majority of the voters? The proposal to include the Times Square project and delete the sidewalks is a slap in the face to the taxpayers on the island and flies in the face of all logic, instead of letting the CRA bureaucrats decide which area to cut out, which is more important, I think we should take whatever moneys we can and then let the citizens decide what the priorities are. Which would you choose? she asked. Sidewalks for the majority of a chic shopping mall for a few?

Ms. Cutler guarantees that if the town goes ahead with the Times Square project, there will be cost overruns exceeding our wildest dreams, not to mention how this will affect out ail too familiar traffic problems in that area. Scarce tax dollars should be spent on children and adults, who are the majority, and not spent on the few.

C. JOHANNA CAMPBELL

Also addressing the CRA interlocal that is before the council this evening, Ms. Campbell said she personally believed that this was not a good project. Already it is over budget. There is nothing to guarantee that it won't be over budget. The county is very willing to drop this on the town, she advised, to let us come up with the money to finally finish this project. If we do get it, we will have to have a special taxing district just to pay for it to be terminated.

In Ms. Campbell's view, the elimination of the sidewalks on the south end of the island is absolutely incredible. The residents down there have a safety factor that they have to face, she notes, and she urge the council to remember that the residents on this island have contributed 80% of the tax base that comes up with the TIF funds. She asks that the bridge between the business community and the residential community not be made any larger by completely disregarding the safety of the residents.

IV APPROVAL OF THE MINUTES OF MARCH 26, APRIL 8 AND APRIL 11 1996

MOTION: Made by Ray Murphy and seconded by Garr Reynolds to approve the minutes of March 25, 1996, as corrected. Unanimous approval.

Discussion: On page 6, paragraph 3, line 2, where It says "Coordinator for Lee County" it should read "Coordinator for Lee County MPO."

MOTION: Made by Ray Murphy and seconded by Gar Reynolds to approve the minutes of April 8, 1996. Unanimous approval

MOTION: Made by Garr Reynolds and seconded by Ted Fitzsimons to approve the minutes of April 11, 1996. as corrected. Unanimous approval.

Discussion: On page 1, add Lee Heyman as a member of the LPA. Remove Lee Heyman's name from the alternate members present and substitute the name of Ron Kidder. Also, correct the name of Ray Isler to Rusty Isler on page 1.

V SCHEDULING AND PRIORITIZATION OF ORDINANCES FOR APPROVAL AFTER SEPTEMBER, 1996

The recommendation for Agenda Item 5 which is attached to the meeting agenda for tonight is that the Town Attorney present the ordinances to the council in draft form. After council discussion, these ordinances can be noticed and set for public hearing, perhaps at a rate of two ordinances per meeting, with the remainder to be picked up near the end.

Attorney Roosa assigned council members to the different categories.

Item	Council Member
	Anita Cereceda or Ray Murphy
B	Anita Cereceda
C, D	Rusty Isler
E	Gar Reynolds
F, G	Ted Filtzsimons
H, I	Gar Reynolds
J, K	Ray Murphy
L, M, N	Gar Reynolds
O	Rusty Isler

P	Garr Reynolds
Q, R	Ray Murphy
S	Anita Cereceda
T	Anita Cereceda or Ray Murphy
U	Ted Fitzsimons or Gar Reynolds
V	Ted Fitzsimons or Ray Murphy
W	Garr Reynolds or Anita Cereceda
X	Anita Cereceda
Y, Z	Ray Murphy
AA	Rusty Isler
B8	Ray Murphy
DD	Rusty Isler
EE	Ray Murphy

Mr. Roosa explained that in order to adopt an ordinance, they have to have somebody sponsor it. It doesn't necessarily make one a proponent of that particular position - you can take an adverse position. There are 30 ordinances listed and they are all presently in existence and will exist up to September 30th. The council decided to start from the top of the list and discuss two a week. If there are three ordinances that are on the same general subject, then they could discuss all three in an evening.

VI APPROVAL OF EXPENDITURES

The expenditures presented by Mm. Segal-George, including an additional one for \$174.95 relating to the phone system, were looked over by the council.

MOTION: Made by Ted Fitzsimons and seconded by Ray Murphy to approve the expenditures. Unanimous approval.

VI INTERLOCAL ON ROADS AND DRAFT MEMORANDUM

Mrs. Segal-George explained that the draft memorandum was prepared to try and memorialize the meeting that Council Member (Gar Reynolds and she had with George Crawford. Attached to the draft is a letter that was given to Mr. Crawford by Gar Reynolds with regards to some issues to investigate. The council members were also given the streets interlocal agreement, which has been changed in Section 4 to include a provision that if all of the \$247,000 in funds are not used by September 30, 1998, the county will cut the town a check for the remainder. The county would like for the town to approve the interlocal and then agree on language in regards to this memorandum and send it back to the county. At the County Attorney's request the memorandum is going to be viewed as a separate document from the interocal.

MOTION: Made by Garr Reynolds and seconded by Ted Fitzsimons to approve the interlocal agreement as written. Unanimous approval.

We are waiting for the Survey Department to come out and look at the project before we can take another step, according to Garr Reynolds. They are ready to work with us.

Mrs. Segal-George revealed communication had been received today with regards to Palmetto Street and Lazy Way.

Mrs. Segal-George would like to go through the draft memorandum line by line to make sure that everyone is In agreement.

A council meeting has been set up for May 14 at 2:00 P.M. between the county and Gary Price on Sanibel, and the question that all the cities will be asking is "What does core level of service mean?" If we don't know whet core level includes, it makes It difficult to determine what else we are looking for and whether or not we should go private or ask the county to bid on it. We don't even know what core level service means on Estero Boulevard Mrs. Segal-George advised she had gotten a call from George Crawford on Thursday, and he had offered to give the town Estero Boulevard to maintain and the county would give us an extra \$123,000 a year if we would be willing to take it. Mrs. Segal-George does not see this amount as being sufficient to cover any problems that might arise with Estero Boulevard, however. The way they came up with this figure, she advised, is the same way they determined how much gas tax the town was entitled to last week. As the county has done little maintenance on the roads on Fort Myers Beach, that reduces our calculation figure. Data is being gathered and privatizing is being looked into and then what the government bid would be.

Along with discussions of the six-month interlocals, there have also been conversations regarding next year's Intodecals, but they have not been progressing as quickly as Mrs. Segal-George would like.

The county has not been willing to continue the current intedocals but wants to negotiate different interlocals because we will be in a totally different situation after September 30th. With regard to the streets, after September 30th, the county only has to maintain Estate Boulevard, so basically they don't want to agree to the terms of this agreement

MOTION: Made by Garr Reynolds and seconded by Ted Fitzsimons to accept the interlocal agreement as written. Unanimous approval.

Marsha Segal-George went through the draft memorandum with the council so that they could make any changes they felt were necessary.

The first item concerns the taxes already paid to the county in the sum of \$247,000 which are to be spent by the county at the town's direction.

The second item specifies that the county provide to the town whatever inventory data that the county has as to roads, drainage and sidewalks.

As to the third item specifying that the county will maintain the traffic signal on Estate Boulevard at a cost of time and materials, Mrs. Segal-George explained that the state makes the municipalities maintain whatever traffic signals are within their boundaries. The Estate Boulevard traffic signal is a state traffic signal, as that is where the road breaks between county and state. Now that Fort Myers Beach has become incorporated, the state has sent us an agreement telling us that we have to maintain the traffic signal or we could take it down. Mrs. Segal-George does not have a dollar figure for maintenance, but it will just be time and materials and we only would pay when they actually have to do something to the light. The city of Fort Myers actually has maintenance agreements with the county and they are paying X amount of dollars per month. It was suggested that maybe the state would like to build them a crosswalk over Estero Boulevard instead.

Another item refers to Jurisdiction of Estero Boulevard. The county has agreed to take over 150 feet on Estero Boulevard if the state will agree. At this time the county is still investigating its policy as to the north portion of Estero Boulevard, which dead ends into a county regional park.

The non Item refers to the town's request that the county inspect the existing sidewalks on Estero Boulevard and consider repair and, also, that the county place a crosswalk on Estero Boulevard at Chapel-By-The-Sea and look at the feasibility of creating a no passing line down the entire island.

The last item refers to a list of possible repair areas presented by Council Member Reynolds which are to be researched or reported back on.

Mrs. Segal-George will send the draft memorandum on to George Crawford without changes or additions.

VIII INTERLOCAL ON CRA AND DISCUSSION OF OPTIONS

The county is ready to walk on the interlocal agreement for Wednesday if the council approves it.

They have bids that are ready to expire on the project, in particular the FP&L undergrounding bids, which will expire at the end of this month. It is time to make a decision as to whether or not the project should proceed.

Mrs. Segal-George has tried to sum up some of the issues. There has been some concern regarding dropping sidewalks out of the project on the south end. She has been told that there are some additional moneys available and she would like to see the sidewalks done in a way that they are consistent all the way down the Island, along with landscaping, benches and litter receptacles. She feels the town could do a better job of that than the county But the county has been unwilling to negotiate on any of these Issues. The county does admit now, however, that the CRA did not cease to exist when

the town Incorporated and that a TIF is still being collected. But they also believe that the money that is now being collected belongs to the county and not to the town. The only thing they have seemingly been willing to agree to is that the additional \$300,000 In community park impact fees be put with this project. She has been told that there is \$900,000 in ice tea funds that are available now because the Stringfellow project on Pine Island didn't go forward and that is a project that is suitable for sidewalks. Also, if we have sufficient right-of-way on Estero Island for sidewalks, they believe that we'll be able to apply for and receive that money. There are design moneys available for this fiscal year and then there would be dollars available for construction in 1897. We also have the \$2.3 million that is available in the Estero Island CRA pot. It is Mr. Roosa's opinion that the county knows it would not be able to do the entire project with \$2.3 million dollars, so there will have to be more agreements. Either the county will have to come up with more money, or they are going to have to have another meeting to discuss what they are going to cut back.

The scope of the project, according to Mrs. Segal-George, is going to be in the agreement that the county is signing with Wright Construction. The town, by signing this Interlocal agreement agrees that the CRA no longer exists and that the town has no claim to the TIF. If the council is interested in passing the interlocal this evening, Mr. Roosa Could draft the language it wants and then talk with the County Attorney's office about getting that language placed in there for their interlocal.

The "Estate Boulevard Project." ac, cording to Ted Fitzsimons, was defined about four years ago and is represented in a plan that was submitted to the state about three and a half years ago. Mayor Cereceda feels we could hold the county to complete the project.

Councilman Garr Reynolds presented suggested proposals with regards to the CRA project, giving priority to the south end sidewalks.

Mrs. Segal-George thinks that the Board of County Commissioners has been very clear about what they are willing to do and what they are not wilting to do and that they will not be allocating any additional money. They are willing to spend the 62.3 million any way the council wants to spend it, but they are not going to spend any more than that. The council needs to communicate to the County Commissioners what it wants them to do with the money. The county has to have a decision on scope of project by Wednesday because they are signing a contract with Wright Construction on Wednesday. A legal opinion from the County Attorney's office is to the effect that they believe they can terminate the Estero Island CRA unilaterally and keep the money too.

MOTION: Made by Ted Fitzsimons and seconded by Ray Murphy that the council go with the interlocal agreement as written. Passed with three "yes" votes. One "no" vote from Mayor Cereceda.

IX COUNCIL MEMBERS' ITEMS AND REPORTS

A. RAY MURPHY

Councilman Murphy expressed his concern with the way the previous meeting was conducted during the discussion of the Mid-Island Marina. It is the policy of the council, although not

strictly enforced, that the applicants remain quiet during deliberations. At that meeting the audience kept

clapping after each speaker, although the Mayor asked them not to. Policies should be enforced and if the council members won't do it themselves, Mr. Roosa advised that they could have a sargeant-at-arms to do so.

Another concern of Mr. Murphy is verbal attacks from the audience. He would like to see this improved on in the future.

Attorney Roosa explained that it is inappropriate for someone to challenge your credentials or impartiality during a quasi-judicial hearing. You need to have more dignity at those meetings. It is a problem that we need to address. They could have a deputy sheriff present at such hearings to escort anybody making offensive remarks or actions from the room.

When sitting as a judicial body, the council is limited by the facts that are presented at that hearing and must weigh the evidence and make a decision based upon the evidence Of the hearing. One of the reasons that many local governments are going to hearing officers for variances is just because it gives it more of a judicial atmosphere. This is very different from a councilman's role as a legislator. You are not limited when you make legislative decisions to what you hear at a meeting. In a public meeting, you don't want to discourage people from talking. You want to just direct it into constructive criticism.

Mayor Cereceda advised she had sent letters to both the Figuerados and the Mertens apologizing for any unpleasant remarks or actions made by the public.

B. MAYOR CERECEDA

Mayor Cereceda spoke regarding the gas tax The county decided that they were going to allocate the town the 2.31% of the gas tax, which is already mandated by statute. She understands from George Crawford that that money will come to us no matter what action we decide now to take with regard to the gas tax. Marsha has prepared a couple of options for us If we want to continue to purue this. The mayor had told the county that the town was entitled to receive at a minimum the same amount of revenue as the city of Sanibel, primarily because of the county's Impact on our roads and infrastructure. But because Estero Boulevard is a constrained road, they have not made any of the developers provide traffic mitigation. She advised that the commissioners changed their allocation policy when it came time to allocate money to Fort Myers Beach. She would like to know from the council whether they challenge their allocation or just accept it.

X TOWN MANAGER'S REPORT

Regaining the gas tax, Mrs. Segal-George outlined the two options the Council had: They could file an administrative appeal with the state as to how those dollars have been allocated, or if the incorporation contained language referring to the gas tax allocation, they could refer to it. We do not have such language in the incorporation, but we could approach the legislative delegation and ask whether they might consider putting a trailer on a bill to amend our Incorporating language to include the formula for gas tax allocation. If this is possible, then the county would have to give us the percentage Outlined in that language.

The county has determined that this whole island is blighted because of traffic and they have made that finding in the past. They are also adding to that traffic by developments that they are pushing forward with regards to Lovers Key and Black Island, the attempt to put in more parking and boatage and the whole effort to attract more and more tourism to the Island. Then add to this the fact that in the comp Plan settlement Estate Boulevard is a constrained road and that since that comp plan settlement no development on this island has had to provide any mitigation for traffic impacts. So they basically have closed us off on all sides with regards to how we deal with this problem. They have determined that Sanibel should receive 5% but they are just not going to do it for Fort Myers Beach. Mrs. Segal-George thinks there are some very strong arguments that we could at least appeal to the legislative delegation and see if they would be willing to do something. Absent that. The only other option is to appeal in an administrative type of hearing.

There is still a difference of opinion on lane miles, Mrs. Segal-George advised. She had sent the county a letter saying that she didn't agree with their calculation of lane miles. Bill Spikowski's calculation is higher than what the county came up with and he believes his formula is correct. The percentage is clear, but what that actually equates into dollars has not been finally decided. They have never done it this way before, they just tried it out on us.

Attorney Roosa felt that we should try the administrative appeal. The legislative approach depends on how much political clout we have, because the legislative delegation doesn't like to take any new issues except at their local delegation meetings. However, if we were to adopt a resolution adopting this as an emergency status because it has to be resolved between now and the next meeting and it was something that was overlooked by the legislative delegation when they drafted our charter, there is a remote possibility that they might give us some relief.

At the meeting with the county commissioners, they had indicated that they were going to revisit all the allocations for the other cities, according to Mayor Cereceda. Marsha had contacted the other cities asking for their support but hadn't gotten any. But their allocations are going to drop if the statute is, in fact, imposed on them as well. This may prod them into giving us support by putting pressure on the county themselves. Mrs. Segal-George said that the contracts of the other cities expire in the year 2005.

Mr. Roosa noted that usually appeals have to be filed within 30 days of a decision. In order to file a suit against the county, you have to first petition the county. But the administrative appeal is there just for that purpose.

MOTION: Made by Ray Murphy and seconded by Ted Fitzsimons that we will pursue the administrative appeal route and also talk to the legislative delegation and see how far that goes. We should also let the other towns know that we are going this route and see if we can garner some support from them somehow. Unanimous approval.

Mrs. Segal-George reminded the council that there will be a workshop Thursday evening with the Sheriff at 6:30 P.M.

Mrs. Segal-George suggested that the volunteers receive pay for some of their time, in particular, Harold Huber, who would like to serve as a sort of ombudsman to the council by gathering together the different problems people wish to present to the council or by supervising different jobs, such as the

laying of asphalt. She feels that there are a lot of people living on the island who have skills the town could utilize on an hourly, contract basis. Discussed, was where the line is between volunteerism and paid help. It was felt it could be discussed further at a workshop meeting.

Mr. Reynolds felt that new personnel should not be hired at this time. When occasions arise when it is felt necessary to hire new personnel, that is the best time to do so. In the meantime, there are many capable people who are willing to serve the town on a voluntary basis. The charter, Mr. Reynolds advised, specifies the employees they should have: Town Manager, Town Clerk, and Town attorney. These are the only three employees authorized by the charter.

XI TOWN ATTORNEY REPORT

With regard to the town council, according to Attorney Roosa, there is an expressed prohibition in the charter which says no present or former elected town official shall hold any compensated appointive office or employment within the town until one year after the expiration of the official's elected term. So in discussions of extra work that the council does, there is no way that they can be compensated for it with regard to employees, the charter provides that the council may establish such departments as it determines necessary for the efficient administration and operation of the town, such departments, offices and agencies to be established by ordinance. So you can by ordinance establish employees even though the only employees identified in the charter are the three that were mentioned.

Regarding volunteers being contract employees, the federal government looks very carefully at what constitutes a contract employee. And if you work for only one employer, and that employer is of the magnitude of a town government, you cannot be a contract employee. To be a contract employee, you must have other contracts with other people. Most of our volunteers are retired people and have no other employment. For the council to start paying them when they are not offering that same service to other people, they are not contractors but employees, which means social security, unemployment compensation, withholding taxes, all the benefits you would have for whatever class of employee, part time or full time, they happen to be. Contractors provide their own tools usually, their own hours of work and place of work. So if somebody is here answering our telephone and if they are going to be compensated, they have to be an employee, not a contractor, unless you employ them from an agency that is a recognized contracting agency that also provides that service to other people. There are limits to what you can expect from volunteers. But by the same token, once you cross the threshold from a volunteer to giving compensation, you must recognize a person as an employee entitled to all the benefits of an employee.

XII PUBLIC COMMENTS AND INQUIRIES

A. "BIG RED" ISLER

Regarding the elimination of underground facilities, Mr. Isler said that it would only cost us one time if our facilities are above ground. If we had an emergency and you manufactured an underground facility which the other power companies do not have, your down time would be the time it takes to build one and have it shipped in here. Aboveground facilities are universal throughout the

United States and in an emergency we could get those items shipped in here over night. They would be brought to us through the power company. Also, we would be buying trouble with underground facilities because the water level is too close to the surface.

B. HAROLD HUBER

Mr. Huber advised that as the town's number one volunteer he didn't need a job but just wanted to do something for the town. When he learned that if we didn't spend all the money allocated to the town, we would lose whatever remained, he thought working for the town would help to use it up. Since then, of course, a letter came in that advised the county will cut a draft for the town for whatever moneys we don't spend. He was not trying to feather his pockets, and he has worked every day as a volunteer since February 15 trying to get the offices set up. He feels he has done a very good job and he also has capabilities that he thought the town could use regarding compiling information and getting contractors for specific jobs. He feels this would be less expensive than setting up an Interlocal yet too much to ask of a volunteer.

C. FLIP HARBY

Mr. Harby referred to a copy of a FAX and letters which had been sent to the Town Manager from the Florida League of Cities from the Public Risk Services regarding legal cases: Fort Myers Beach Civic Association, case No. 96-809; William Shanko, Plaintiff. Case No. 95-0330; William Shanko, Plaintiff, Case No. 95-6894, and Case No. 95-8362. This was requested by Mr. Roosa back on February 21 and mailed to him on February 26. It basically said that they would not cover these cases in litigation. Mr. Harby said he heard two weeks ago that the council had made a motion to Support in these suits although the League of Cities said they weren't covered.

Mr. Harby advised the council he wanted them to think about something that was said during all the incorporation studies, meetings and reports, and that was, if you're happy with what you've got with the county today regarding service levels, then that doesn't become negotiable. The item for negotiation is the administrative fee, whether it be 8% to 4% to 6% to 5% - that's the only thing that really needs to be negotiated. Because of the time constraints that's placed on this council and this government to meet statutory requirements regarding budgets, getting them approved by the taxpayers, the council is under some severe time frames to get everything done. The council needs to refocus on what else needs to be done with the county.

He has talked about FEMA and certification regarding our insurance, Mr. Harby said, and he sincerely hopes that this has been done.

The minutes of a couple of weeks ago is also a concern of Mr. Harby, where they said revenues received to date from the State of Florida was \$8,000. But we were told we'd have \$43,000 from the state every month. That is money that is due us from the state and we are going to need it. This is April and we have gotten \$8,000 from the state.

D. PAT LOFFRENO

Mr. Loffreno talked about trolleys, which create much less pollution for the Beach. He also spoke about doing something constructive with the \$300,000 in CRA money, such as building underpasses.

XIII

ADJOURNMENT

Mayor Anita T. Cereceda adjourned the meeting at 9:15 P.M.

Respectfully submitted,

Lorraine Calhoun

Recording Secretary

AMENDMENT TO MINUTES APRIL 22, 1996

(As recorded in the minutes of May 6, 1996)

Section IX, paragraph 2:

"Verbal attacks from the applicants" should be changed to "verbal attacks from the audience".