

FORT MYERS BEACH TOWN COUNCIL MEETING

MAY 20, 1996

NationsBank, Council Chambers 2523 Estero Boulevard

FORT MYERS BEACH, FLORIDA

CALL TO ORDER

The meeting was opened on Monday, May 20, 1996, at 6:40 P.M. by Anita T. Cereceda, Mayor.

Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted Fitzsimmons, Vice Mayor and Council Member; Council Members Ray Murphy, Rusty Isler, and Garr Reynolds; Marsha Segal-George, Town Manager; John Gucciardo, Assistant Town Manager, and Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE AND INVOCATION

All assembled recited the Pledge of Allegiance to the flag and Councilman Ray Murphy gave the invocation.

III PUBLIC COMMENTS AND INQUIRIES

A. JOHANNA CAMPBELL

Ms. Campbell addressed Item 10 under the Manager's Reports, the Town Hall cleaning bids. As someone who owned a cleaning company, Ms. Campbell asked that the council make sure that the specifications are spelled out; that the number of people who would be performing the duty is spelled out. She hopes that the bidders furnish the council with certificates of insurance even though they have not been granted the contract yet. The certificate of insurance would also show that they carry workmen's comp. as well as property liability. Be sure that they are licensed to do business in the State of Florida, Lee County. When it comes time for the contract, make sure that there is an indemnification clause in the contract, which would hold the town harmless of anything that would happen to visitors to the Town Hall. Even though it is a small cleaning contract, you do have to protect yourself, especially for property liability. A vacuum cleaner could be wired wrong and blow up the whole building.

B. FLIP HARBY

Mr. Harby addressed item 10, d, Awning bids. He advised he didn't know if this had been put out to public bid and advertised properly. He questioned whether the Town Hall needed an awning and just how many people at one time could be protected by a 42" deep awning. The low bid is \$901 and he doesn't know if the council needs to spend this money now.

Regarding FEMA, Mr Harby applauded the council for taking action on an item he had brought to our attention several weeks ago. He received a letter addressed to Mr. Gucciardo in his packet regarding FEMA certification and thanked him for his efforts in obtaining it. We are certified through

December 15, 1996; we are not going to lose our discount status. Council has until that time to apply, as outlined in the letter.

Mayor Cereceda at this time introduced Mary Evans, who is running for Seat 5 for the County Commission.

IV APPROVAL OF THE MINUTES OF APRIL 25, 1996 and April 29, 1996

MOTION:

Made by Ray Murphy and seconded by Garr Reynolds to approve the minutes of April 25, 1996, with correction noted. Passed unanimously.

MOTION:

Made by Ray Murphy and seconded by Garr Reynolds to approve the minutes of April 29, 1996, with correction noted. Passed unanimously.

Corrections to Minutes:

Rusty Isler is shown as being present at both meetings by the name Ray Isler.

V APPROVAL OF EXPENDITURES

MOTION:

Made by Ray Murphy and seconded by Garr Reynolds to approve the expenditures. Passed unanimously.

Discussion:

Councilman Reynolds noted that there was a bill for cleaning services among the expenditures presented, and wished to know if they already had a contract for cleaning. He was told they did have a lady come in and clean and they are now trying to formalize a contract. He also questioned the bill from Kelly Services and Mrs. Segal-George explained the hours put into transcribing minutes per month. This will be further discussed under the Manager's Items.

VI FIRST READING OF ORDINANCE PACKET "A"

- a. Town of Fort Myers Beach Alcohol Beverage
Establishment Exposure Prohibition Ordinance

Mayor Cereceda read the ordinance aloud. Attorney Roosa advised it could now be set for a hearing. Marsha Segal-George has set the hearing date for June 3, 1996, at 6:30 P.M.

b. Town of Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance

Mayor Cereceda read the ordinance aloud. A hearing date for this ordinance has been set for June 3, 1996, at 6:30 P.M.

VII REVIEW OF FIRST DRAFT OF ORDINANCE PACKET "B"

a. Town of Fort Myers Beach Liquor License Restriction Ordinance

Mayor Cereceda read the ordinance aloud. A hearing date for this ordinance has been set for June 3, 1996, at 6:30 P.M.

b. Town of Fort Myers Beach Open Alcoholic Beverage Container Ordinance

Mayor Cereceda read the ordinance aloud. A hearing date for this ordinance has been set for June 3, 1996, at 7:00 P.M.

Discussion:

Councilman Reynolds noted that on the second page, line 3, the word "no" should read "known." Councilman Fitzsimmons questioned line 23, definition of public beach relative to the town of Fort Myers Beach. Should this be added or is it in place of #2, owned by Lee County? Attorney Roosa feels it should be added because the county beach is in the town of Fort Myers Beach and the county ordinance no longer apply. So we need to have "owned by the county" and should just add "or owned by the town." Councilman Reynolds feels that 3 and 4 already spells out the fact that this is for the town of Fort Myers Beach. We are talking about who owns it, he was advised.

Mayor Cereceda noted that especially since the beach renourishment, people are asking what part of the beach is the county's, the town's, the property owners'. She was advised that the property owner owned either to the mean high water line or the erosion control line. The public beach is owned by the state of Florida and is within the town of Fort Myers Beach, which can regulate it. Through the ordinance, the town can regulate tile conduct of the people using the county's park beaches although not the county's park beaches themselves.

VIII DISCUSSION OF EMERGENCY PLANNING OPTIONS

John Gucciardo, Assistant Town Manager, advised that this was a follow up item to the workshop meeting held with the Sheriff, the Fire District and the Public Safety people. The council needs to come to some understanding as to what the emergency evacuation or planning is going to be over the next few months. There is no need to formalize a plan per se unless the council wants to take that on. In terms of specifics, the council has been given copies of the Statewide Mutual Aid Agreement, Exhibit "A," which can be used as kind of a guide for that agreement. In also should be a guide to what the council might want to consider in terms of other options on its plans for local involvement, coordinating its efforts with those of the Sheriff, the Fire Dstrict and Public Safety. It should be completed and sent in.

No final decision is needed tonight but it will probably appear as a recurring agenda item until it is formalized.

Councilman Isler expressed the opinion that one of the three staff people should be the council's representative at Lee County. Mr. Gucciardo advised that the council had different options available to it. He understands that the Board of County Commissioners does not participate at the Emergency Operations Center, but rather its staff does. According to the Town Manager, Sanibel and Cape Coral sent their mayors and in the past the Board of Commissioners sent their chairman. Sometimes a mayor and a staff member are sent. The town, Mrs. Segal-George feels, can designate someone to go to talk with FEMA and the state and implement the Mutual Aid Agreement although the county will be involved in all of that. Whoever represents the town, however, is the one the town would communicate through and coordinate with until everyone gets back together again. In other words, according to Councilman Isler, one option would be not to send anyone and just rely on the county to represent us and have a contact available to us. The other option would be to send somebody from the staff or the council to just stay in touch. Mrs. Segal-George's recommendation would be that the council send someone to represent the town's interest.

One of the options that the town has, according to John Gucciardo, is to develop its own plan which would cover all kinds of different scenarios. We could have a designated person at Emergency headquarters and another one closer to home, like at Edison Community College. On the other hand, we do have the comfort of knowing that we are already part of a plan.

Lee County will provide us with a radio within the next few weeks. The Town Manager would also suggest putting a beeper on whoever goes to EOC.

If we opt to have two liaison people, one could be stationed more locally at the Bonita Fish Company building on the other side of the bridge or at Shell Point or at the Sheriff's substation at Summerlin or at Edison Community College.

The Statewide Mutual Aid Agreement dictates that three people are needed: one contact person with two alternates.

MOTION: Made by Rusty Isler that the Mayor be our representative with the county and in the Mayor's absence, the Vice Mayor will do it, and in the Vice Mayors absence, the Town Manager will. And if there is a staging area set up, the Town Manager can assign someone to represent us at the staging area. Seconded by Ray Murphy. Passed unanimously.

IX

COUNCIL MEMBERS ITEMS AND REPORTS

A. RAY MURPHY

Current balances:

Operating Account: \$10,000.00

State Investment Account:	479,676.77
Total Balances:	489,676.77

Councilman Murphy has been informed by the staff that they expect to collect state revenues by May 28 in the approximate amount of \$40,000. Staff would like to submit the bills for approval for payment once a month, unless circumstances dictate otherwise.

Garr Reynolds wished to know if they had started doing a budgetary ledger on a monthly basis. The Town Manager plans to have software in place soon that can accommodate monthly calculations. Jody Hester, a CPA, is doing payroll right now at an hourly rate. Someone else will do revenue forecasts and some of the budget work. They will also need an auditor. Mr. Reynolds suggests the accounting work be put out for bidding, as he feels a CPA is more expensive than a bookkeeper. Ray Murphy feels that to get everything up and running, it was best to start out with a CPA. The Town Manager explained that, her reason for hiring hourly help at this time is because figures have to be put before the council by the 15th of July. Mr. Reynolds doesn't feel that our charter provides for extra positions. Mr. Roosa explained that a charter doesn't establish positions. The town council determines the positions. The charter merely mentions the minimum in the way of employees and there is a provision for an auditor in the charter. The extra help aren't employees but outside contractors having their own liability insurance and workmen's compensation. There were items in the preincorporation budget with regards to dollars put aside for budgeting and the Town Manager advised she doesn't think we are going to spend anywhere close to the dollars in this preliminary budget.

Rusty Isler feels it is better to pay people on a weekly basis rather than on a monthly basis and that we should have an expenditure report at every regular meeting.

B. GARR REYNOLDS

Councilman Reynolds wished to know where we stood on the FP&L franchise fee and other matters that were brought up previously. The Town Manager advised that they have all the options and plan to bring them to the council all at once or one at a time if preferred. Cable is still in the County Attorney's office. Regarding the gas tax, they are getting the statutory formula. The Town Manager sent a letter to Don Stilwell asking for a timetable on when he is going to be negotiating with the other cities who are supposedly going to renegotiate their gas tax agreements with the county. Sanibel has told her they have no plans to renegotiate and she understands that Cape Coral has said so also. County Commissioner Stilwell has not responded to Mrs. Segal-George's letter. Mr. Roosa has been trying to get some documentation from the county so that we would have a final document that could be appealed. We have no evidence or knowledge that the county is renegotiating and we plan on appealing their decision.

Attorney Roosa advised he had talked with Jim Yeager, who is going to prepare a resolution for the County Commission to adopt in June, and he will notify Mr. Roosa prior to that adoption so that there will be an opportunity for the Town Council to be present at that meeting when they make a decision. The resolution will have Cape Coral's, Sanibel's, Fort Myers and Fort Myers Beach's allocations. In order for the town to take any legal action, we have to appeal some final action of the agency, and the County Commission hasn't taken final action in this regard, at least that's Jim Yeager's position and

Mr. Roosa agrees with him. When the resolution is prepared, Mr. Yeaget feels that the County Commission will allow for the town to be heard.

Mayor Cereceda feels that the allocations are irrelevant and what we need to discuss is how they are arrived at. Attorney Roosa, advised that the allocations will just be listed with no explanation as to how they were calculated.

The Town Manager would like to have a franchise workshop where all the franchises are spoken about at one time.

The contract for the Town Manager is finalized and available to be viewed.

Attorney Roosa suggested that executed contracts could be attached to the minutes where a motion approved them. This delays distributing copies of the minutes, however.

Another suggestion is to have a copy of all signed documents in a notebook where anyone can come and view them. Right now, however, they are in individual folders and are logged in, and are available to the public.

Do we need two attorneys at a workshop? It was explained to Mr. Reynolds that

Mrs. Segal-George was only at the last workshop in the capacity of town manager, not as an attorney.

At the April 29 meeting, a motion was made that the Town Manager and the Town Attorney pursue a sufficient definition to accomplish a uniform understanding between the town and the county. Has the understanding been accomplished, Councilman Reynolds asked. Attorney Roosa produced a memo that outlined the things he is now working on. One of the items is the CRA. Attached to the memo is the most recent correspondence from Jim Yeaget where he has taken the position that the execution of the interlocal agreement empowered the CRA to execute a project within the town's limits, the nature and scope of which rests solely upon the CRA's discretion. Mr. Roosa does not agree with that legal conclusion but feels that the real issue with the CRA is a meeting of the minds. On tape in the Town Manager's possession is the actual CRA vote of the County Commission when two of the county commissioners said that they intended to complete the entire project including the sidewalks to the south, that there were insufficient funds within the CRA to complete that project, and that therefore they were going to do the Times Square and the undergrounding with the CRA funds but would later folios'; up with funding from the Ice Tea funds for the sidewalk project. It was with that thought that they went ahead to pursue the whole project. We have to assume that the County Commission intends to comply with that interlocal agreement, which means they are going to complete the entire project. Mr. Roosa feels that the next step for the town is to write the County Attorney to get specific as to the funding for the sidewalks and the time table for the sidewalks. If the County Commission does not intend to do the sidewalks, their contract with FP&L may be void.

Mr. Reynolds advised that it had been indicated to him that the TIF funds are increasing tremendously and that the county probably will have the money to do some of these extra things.

Mr. Reynolds would like for the council to know right away when an appeal is coming up. He would also like to see the Town Manager and the Assistant Town Manager give equal treatment to anyone wishing to make an appeal.

A letter was received that had gone to Senator Dudley about the water craft problems on the island and Mr. Reynolds feels that we really need to get a handle on that. Mayor Cereceda advised that it all depends on what their bare bones government is willing to spend to enforce laws regarding water craft.

Councilman Reynolds brought up the issue of dumping by the sewer plant into the Bay. Do we plan to sue the county? The Town Manager advised she had said we might have a claim against the county. The most recent memorandum out of Don Stilwell's office had a variety of options for solving the problem. Last week she sent Mr. Stilwell a letter with a number of questions and hasn't received any direct response to them. We don't know exactly what they are going to do. Looking at the options, she gathers they have a very serious problem over there. All the options are very expensive -- 1 million to 2 million dollars. We are asking for a briefing with regard to the various options. Johnson Engineering has been bred as an independent engineering consultant to go look at the sewer plant and to come up with cost estimates. Councilman Fitzsimmons wished to know if the Health Department was involved at all and was told not at this point. Is it posing a hazard to the health of the community or its guests? We asked that question of the county less than a week ago and are awaiting their answer.

FDOT advised Mr. Reynolds that the CRA had told them they were going to get rid of the signal light at Times Square and put a post there instead with a walk light. He suggested to FDOT that someone talk with Marsha Segal-George before making any decisions.

The five lanes that were supposed to be open last week are still not open.

Mr. Reynolds felt that the council should know that on the west side of San Carlos Boulevard they are bringing the sidewalk down within 200 feet of the Hurricane Pass bridge where there are four lanes. You can cross at this point, if you care to go back to the other side, you must go down to Buttonwood where there will be a signal light. You have to have breakdown lanes on each side of that traffic and, therefore, no one can cross there but must go around instead.

C. TED FITZSIMMONS

Councilman Fitzsimmons would like to know if the buoys are going to be restored into the 500 foot line after the dredging; is finished and how we can find out. The Town Manager advised that they would check into this.

Mr. Fitzsimmons also brought up the subject of town staff assisting county staff in delivering the approved CRA project. The county has asked us for help although they were to supply sufficient staff to accomplish the objective of getting the easements signed. He has no problem with people in the community volunteering to help the county, but doesn't feel it is appropriate for the town to assist in a county project. The town shouldn't be involved in the delivery of something that the town has said was an expendable item of the project. It tends to bring the town into the project and make the town part of that project and therefore involved in all aspects of it, including potential liability. Mr. Roosa said it is clear in the interlocal agreement that we executed that the county would at their cost handle this to completion. The Town Manager advised that we had helped the county with obtaining easements for the dredging project and had agreed to help them again in this project. If the council prefers a hands-off approach, this can be done. Mayor Cereceda's opinion is that it's a question of policy. What is best for the town is to see things effectively and efficiently done as quickly as possible, and if Marsha and John

expedite this by calling on others to help, this would be in the best interest of the town. Councilman Isler feels that if we are going to slow down the project by not helping, that wouldn't be a very positive approach. You can't divorce yourself from the project because ultimately, in its completion, it's going to be the town's, Mr. Roosa advised. He does agree that the town is using its money when it gets involved in the project. John advised that the CRA staff will attempt to make the first contacts and then let him know if our involvement is actually needed. Ray Murphy doesn't see it making a major dent in our budget nor' does he feel it will be time consuming. He also feels we need to expedite this. There are going to be a lot of times in the future where we are going to have to cooperate with the county in any number of areas and it would be nice to send a message out now, yes, we are willing to cooperate with the county and we will in the future, too. Mr. Reynolds does not feel that we will be short changing the county if we do not help them in the project as they have plenty of staff. Regardless of whose project it is, we have to be involved in it, Mayor Cereceda feels. The direction on our involvement in the project appears to be three for and two against.

Councilman Fitzsimmons said he had a question regarding Section 34-1803 of the Land Development Code, which says that any hotel or motel proposing to convert to dwelling units or any residential building proposing to convert to motel/hotel units will be required to comply with the density limitations of the Lee Plan, all applicable parking regulations and all other regulations of this chapter affecting the proposed use. He does not feel that what the county has allowed to be permitted at the Gulwing is consistent with that piece of the Land Development Code, which was rewritten in August 1995, when the change of the Gulwing as he understands it was in November 1995. So there was regulation approved and in place that was not complied with by Lee County.

Mr. Fitzsimmons referred to a letter of today's date from Mr. Robert Young to Mr. Roosa. Mr. Young identifies himself as a resident of the Surf Song condominium on Fort Myers Beach, which is adjacent to the site of the proposed Sun Stream Convention Hotel at Virginia Avenue. He has been active in the efforts of the Virginia Beach fund seeking to prevent the construction of the hotel and advises that an appeal is presently pending before the 2nd District Court of Appeals regarding the validity of the Lee County Development order authorizing construction of the hotel. He requests that the town appear in the appeal as a friend of the court and advocate the interest of the people of Fort Myers Beach. Otherwise, the public's interest in this matter will only be represented before the court by Lee County. Mr. Young enclosed a copy of the initial brief for the attorney's reference. Mr. Fitzsimmons asked

Mr. Roosa for his opinion on the request. Mn Roosa advised that there were two issues raised on the appeal. One was whether the lower court erred in nullifying an amended and more restrictive zoning ordinance in effect when the Sun Stream development order was issued, rather than the ordinance in effect when the application was filed. The other issue is whether the lower court abused its discretion by failing to permit amendment to the complaint, raising lack of due process to the Sun Stream development order. As a procedural order, this second issue probably wouldn't have any effect on the town one way or the other. The first issue could affect the town. Mr. Fitzsimmons feels that the town is an affected party and it is reasonable that the town resolve whether or not it should file an amicus with the court. The reason it is in the appellate court right now is because they're going to determine if there were any mistakes made in the lower court. The Mayor feels that the bottom line question is whether or not the town should get involved in the Diamond Head issue.

D. RUSTY ISLER

Mr. Isler spoke on the cleaning bids. Marsha feels that the bids can be withdrawn.

Suggested that the recording secretary continue taking minutes at the LPA meetings and the new administrative assistant could take minutes at the council meetings and in this way be brought up to speed on what is going on.

Regarding the sewer, Mr. Isler read where some mountain streams have been heavily chlorinated and been made crystal clear, but there are no life forms in them.

E. ANITA T. CERECEDA

Mayor Cereceda reported on two meetings she had recently. One was with Barbara Manzo of Parks & Recreation and had to do with vendors on the beach. She is going to come here on June 3 to make a presentation. The Mayor asked the council to think about what kind of policy we want to have about people selling things on the beach. The jetski people wouldn't be affected. They are land-based and are paying rent for a particular space. There is a man selling kites on the beach who pays only a nominal fee. The county has given the go ahead to a man giving puppet shows.

The Mayor also attended a meeting with the Times Square Merchants Association. These are people she feels who are very eager and willing to work with the Town Council. The Mayor has resigned as president of this association but will continue to attend meetings.

Suggestions are still needed for a Fourth of July celebration.

The Mayor has received several requests to serve on boards. She has made a distinction between something that has to do with the Town of Fort Myers Beach, for example, the MPC, and boards that are asking the mayor to be on, like the American Cancer Society or the Drug Free Coalition for Lee County. She asked the council if they wanted to have input into which ones she should decline or accept. If there are costs involved, as for a seminar, should she pay out of pocket or should the town? The American Cancer Society has a fund raiser coming up in July and is asking her as the mayor to be one of the fund raising people. Should she do this? Mrs. Segal-George feels that it is very typical for organizations to ask for the mayor of a city or town to be involved in their fund-raising efforts or other events. Her position would be that if the mayor is willing, she could participate. If there are too many of these kinds of requests, then they can be passed amongst the council. It doesn't really commit much as far as the town's resources, just your time. Mayor Cereceda's concern is asking people for money in her position as the mayor and not as a resident. Garr Reynolds said he understands the Mayor's position and that he wouldn't do it as a councilman. Ted Fitzsimmons felt it was all right and that he was sure the organization would pick up her expenses.

MANAGER'S ITEMS AND REPORTS

A. Update on FEMA application

John Gucciardo advised that they had gotten the confirmation letter from FEMA they had been hoping to get. In terms of the Community Ratings Service Program, again it's a two-part thing. There's an application that's made to FEMA in order to get their six-digit identification number that identifies Fort

Myers Beach as a separate municipality for their purposes. Once this is done, we will be judged by the Community Ratings Service to see where we fit into the scheme of things. The confirmation letter tells us there is not going to be any gap period, that in that process we will still be considered part of unincorporated Lee County and still maintain the benefits of their rating. The Community Ratings Service people are going to be with us on Wednesday and Thursday of this week to work with us. We have already gathered information that they have asked us to put together so that they can start the application. They will probably give us another follow up list and, hopefully, over the next few months, we'll be able to get that packet together. Our goal is to attempt to at least hit the rating that the county has and maintain the status that we have all been used to in terms of the rating benefits for the premiums on flood insurance and also for applicability of the federally insured mortgages.

B. Fire District use of Town Hall

It was agreed that the Fire District could use Town Hall for their meetings.

C. Update on SeaKruz/Port Tax Issue

The Town Manager and the Assistant Town Manager investigated where the port fee was going. What they found out was that the port fee wasn't really going to anybody. Does the council wish to direct Mr. Roosa to prepare some legislation to enable us to charge a port fee for the town of Fort Myers Beach? The Town Manager feels there are some impacts that the town realizes from the SeaKruz and that it would be appropriate to charge a fee based on those impacts. She would like the money to be used to have someone direct traffic and for parking.

MOTION: Made by Ted Fitzsimmons and seconded by Ray Murphy that a port fee be charged. Passed unanimously.

D. Town Hall awning bids

An awning was suggested in order to give shelter to people entering the front door during rain. It would also be a good identification for Town Hall. The landlord would have no problem with it. The color would be mangrove green. Two companies have submitted bids. The lowest bid is the sunbrella acrylic fabric. Mayor Cereceda's only concern would be the cost. Ted Fitzsimmons feels that especially at this time of year it would be a welcome amenity. Four of the councilmen are for the awning. Only Rusty Isler did not feel a need for one.

E. Town Hall cleaning bids

This has been withdrawn.

F. Upcoming Workshop Schedules

Budgets, franchise fees, revenues will be on the workshop schedules for the next month or so. Mayor Cereceda asked if we could dedicate 20-30 minutes during each workshop to policies and procedures. All were in agreement.

Councilman Isler said that it seems the trend now is not to raise property taxes but to have utility taxes and franchise fees. Isn't it simpler to raise property taxes than to make new taxes, he wished to know. He was told we only pay one franchise fee now, and that is cable.

It was learned that none of the utilities chargeed an overhead for processing. A number of them we'll have to enforce, like the phone.

G. Long Property

Mrs. Segal-George met with Don Morrow of the Trust for Public Lands last week, at which time it was decided that Mr. Roosa would draft a resolution for the council's consideration. There has been a lot of confusion on whether there is or isn't an offer on this property. Mrs. Segal-George advised she would like to make a back up offer on the property. If the offer doesn't close or if that offer wasn't there, then we're next in line. If the offer is legitimate and it's going to close, their back up offer won't have any effect. Mr. Morrow will meet with the realtor for the seller on Wednesday. The property is still slated to close on June 3 and Mrs. Segal-George would urge the council to pass the resolution and ask Mr. Morrow to submit a back up offer for the price of the property on the tax rolls or the appraisal, whichever is greater. The appraiser who is going to do the appraisal of the property is coming in on Wednesday.

MOTION: Made by Ted Fitzsimons and seconded by Garr Reynolds that the
 Resolution authorizing the acquisition of the Long property by the Town of Fort
Myers Beach be adopted.

Discussion: Ted Fitzsimons read his copy of the Resolution which reads in part:

The Resolution of the Town Council of the Town of Fort Myers Beach, Florida, authorizing the acquisition of real property known as 8LL4 for park purposes.

WHEREAS, prior to 1953, an 8LL4 had been designated as a significant Caloosa Shell mound;

and,

WHEREAS, the subject property is located at 289 Connecticut Avenue, Fort Myers Beach, and is described more particularly as (legal description);

WHEREAS, the property's current strap number is as represented herein; and

WHEREAS, there is a public purpose in protecting the intact nature of the site and the human remains buried by the Native Americans;

NOW, THEREFORE, be it resolved by the Fort Myers Beach Town Council that the Council authorizes and directs the Town Manager to take the necessary actions to acquire the property for presentation for the public. The foregoing resolution was adopted by the Town Council and is being put to a vote, ect., etc.

They will not get the appraisal before they put the back up offer in, but they will say in the back up offer that it won't be any more than the appraisal would be.

Mr. Roosa advised he had contacted the attorney that represents the owner of the property, who told him that there was a contract, that the purchaser had what he called a free time to examine the site and make a decision to withdraw their deposit and that time had expired so that the contract was hard

money and was set for closing early in June. The attorney had already been informed through the realtor that the town was interested in purchasing the property and Mr. Roosa told him he had drafted a resolution and intended to present it to the council. The attorney said he thought it unnecessary and he didn't want the council to adopt the resolution. He told Mr. Roosa that if the sale went through, he would notify him and he could contact the new owner and attempt to purchase the property from the new owner. If the sale doesn't go through, then he would still contact Mr. Roosa because there were no other backup offers at that time (Friday). The attorney said he didn't want Mr. Roosa to become involved between the buyer and the seller. Mr. Roosa feels this way too. Mr. Roosa feels that the attorney will contact him and then they will either be dealing with a new seller or with the old seller. The attorney wasn't very excited when told the town would be buying the property for the appraised price and Mr. Roosa explained why that was. The purpose of the resolution was for a more aggressive action intended to be the threat of eminent domain, which has certain tax consequences on a seller. If the resolution is limited to the placing of a back up offer, Mr. Roosa doesn't see a problem. Perhaps under the Now, Therefore, part of the Resolution, they should authorize the Town Manager to make a back up offer.

Mr. Roosa said he had two concerns. What is the purchase price of the property and what is the property going to cost the town on a monthly basis. It will be on a lease-purchase type of arrangement. We need to get two appraisals. He suggested modifying the resolution to authorize a back up contract of \$740,000.

The resolution was revised as follows:

NOW, THEREFORE, be it resolved by the Fort Myers Beach Town Council that the Council authorizes and directs the Town Manager to prepare a back up offer for \$740,000 to acquire the property for preservation for the public. The foregoing resolution was adopted by the Town Council and is being put to a vote

MOTION: made by Ted Fitzsimmons and seconded by Garr Reynolds that the revised Resolution authorizing the acquisition of the Long property by the Town of Fort Myers Beach be adopted. Passed unanimously.

Discussion: Ray Murphy stated that he would be wary of the purchase price. But he is all for pursuing acquisition of the property -- cautiously.

H. Expenditures

The bill for transcribing minutes was discussed. The hours put in by the recording secretary can be reduced if the Administrative Assistant does the council minutes and Lorraine does the LPA minutes without attending the meetings. Lorraine is now a licensed independent contractor.

MOTION: Made by Ray Murphy and approved by Rusty Islet to approve the bill for salary up to the date of May 26 for the recording secretary. Passed unanimously.

Discussion:

Councilman Reynolds questioned the hiring of additional employees and was informed that independent contractors were not in the same class as employees.

XI TOWN ATTORNEY ITEMS

A. Status of pending lawsuits

As per his memo, Attorney Roosa advised that the first case, a certiorari action, has to do with the granting of a setback. He has filed a motion to quash, which is the same motion that was filed by the county. The county is also a party to that action.

The next case is also a certiorari and both the town and the county have filed motions to quash.

Case No. 96-009 (Civic Association) has been dismissed. After the last hearing the plaintiffs filed a voluntary notice of motion to dismiss. Attorney Roosa made a bill showing the hours he worked on this case, and they came to 7.7 hours, or a total of \$962.50. The legislature has passed a statute which allows for the court to award reasonable attorney fees to the prevailing party. By the plaintiffs filing a voluntary dismissal, we can be considered the prevailing party in that action. Because initially he didn't separate hours as cases came in, Mr. Roosa advised that perhaps some of these hours could be shared with other litigation. Courts are generally reluctant to grant motions for attorney's fees. Should he pursue these attorney fees which he has already been paid by the town? If he won, the Civic Association would pay the fees, about \$800.00. If the court rules that it was a justiciable issue, we would not get our attorney's fees.

In Case No. 96-3330 (Shenko), a motion for stay was filed in this action pending an opportunity for a hearing before the Town Council. There is a hearing set on that motion for June 17. This is the case that was before the County Commission and the defendants filed a letter with the County Attorney requesting that the county intervene in this case based mainly on their concern that the County Commission's interests may not be protected by the town's attorney. Mr. Roosa was told that the County Commission has directed the County Attorney to intervene, but he has not yet received a motion to intervene. Under Florida Statute 164, the governing body of a county or municipality may not file suit against another county or municipality unless the governing body is notified. This notice must be given no less than 45 days in advance of filing the suit. Then there is a provision that within 30 days of that notice there would be a chance to meet with the County Commission. So if we file a motion to intervene, there may be an opportunity for us to have a meeting with the County Commission to discuss their concerns of how vigorously our attorney will defend their interests. At the same time we have this motion coming up for a stay. We may be able to get all the parties together in one meeting.

B. Status of Nyman Special Master proceeding

A public hearing has been set for May 31 and Mr. Roosa and Marsha Segal-George will attend. Mr. Roosa does not recommend that the council attend. He has filed a motion to dismiss in this action based upon subject matter jurisdiction.

C. Gas Tax Allocation

The County Attorney is going to submit a resolution and at that time we will have an opportunity to appear and maybe that will force the issue of the County Commission to decide on whether it's a fair allocation or what they are going to pursue in this matter.

D. The Long Property (8LL4)

Mr. Roosa recommends that we go ahead with the appraisals and he has talked with Mr. Morrow about pursuing specific funding and providing us with the cost so that the council will have an idea of what the cost to the acquisition of the property will be. Mr. Morrow said that they did not get involved in the development of the property, so one of the things the council would want to consider is what it is going to do with the property when it gets it.

E. Mid-Island Marina

Mr. Figuerado has filed the same hearing as the Nyman hearing and Mr. Roosa is in the process of preparing a response to that.

F. County Attorney's Letter

It would be Mr. Roosa's recommendation that he be directed to write to the County Attorney to basically request that he inform the council of the time table for the sidewalks and the funding of the sidewalks. Rusty Isler feels that Mt. Roosa's letter was a good way to approach the problem. G. Cable TV

Mr. Roosa talked to Attorney Peterson and told him that we didn't want to increase the cost to the users of cable TV on the Island. What we wanted to do was to take that portion that went to the county and have it come to us. He is supposed to get back to us on that.

XII PUBLIC COMMENTS AND INQUIRIES

A. FLIP HARSY

Mr. Harby said that the council passed a resolution to maybe spend \$740,000 on what is basically an undocumented piece of property that is supposed to be a Caloosa Shell Mound. How does the town plan to pay for it? Under Article XI, Section 11.03, paragraph B, "Unless authorized by the electors of the town in a duly held referendum election, the council shall not authorize or allow to be authorized the issuance of revenue bonds or enter into lease purchase contracts or any other multi-year contracts all for the purchase of real property or the construction of any capital improvement, the attainment of which extends in excess of 36 months unless mandated by state or federal governing agencies." Mr. Harby stated he didn't see how the council was going to buy the property in 36 months unless they are circumventing the charter.

He agrees with Mayor Anita that a franchise fee is a tax, call it whatever you want to. The county is charging a franchise fee to FP&L and not to the individual homeowners, and that is to charge them for the use of the property for the right-of-ways. There is a franchise fee on the telephone, and we get 911 service from that. Councilman Reynolds advised that he didn't think anyone spoke in favor of extra franchise fees and only mentioned the ones already in place.

They are doing a Matanzas Pass Preserve cleanup and he urges people to join in at 7:30 every Saturday morning. Free cokes and water are provided.

B. BOB GAYDOS

Mr. Gaydos said that tax is tax. He doesn't care where it comes from, it is still coming out of his pocket. Like the federal government, you are spending and then taxing.

With respect to the Long property, Mr. Gaydos said the council is saying the state is going to loan us \$1,000,000 for nine years. That comes to \$1,800,000 plus interest.

He doesn't feel the wheelchair ramp outside has any use.

Mr. Gaydos also referred to a letter from a representative who said that the "City" of Fort Myers Beach is responsible for putting lights out here.

C. PETER LISICH

Regarding the franchise fees, Mr. Lisich said he is hoping that as we bring some of them back to the town we will cancel the Fort Myers Beach version of those. Instead of raising additional fees, get rid of some of fees that we are paying already.

He believes that we have as a town delegated our responsibility and the expense of that to the county for permitting and for development orders. Tonight he heard Councilman Fitzsimmons quoting Section 3418.03 regarding the Gulwing Hotel and felt that there was some violation of that section. This perhaps resulted in a directive to staff to use staff time to further investigate that. If so, Mr. Lisich has a concern with the use of that staff time toward a project that the county is being paid for doing. That issue wasn't clarified, he noted. If we think the county is not issuing permits properly or handling the Land Development Code properly, we need to take that up with the county and ask them to do their job properly, somewhat similar to the obtaining of the easements for the CRA. Let's not do the county's job unless we are getting paid to do it.

With respect to the Diamond Head project and a letter from the neighbors about their lawsuit, Mr. Lisich isn't sure about the directive on this matter. If tomorrow the council gets a letter from the property owner of the Diamond Head site saying my neighbors are harassing me, they are trying to stop my business and prevent me from proceeding forward, will you issue another directive to the attorney and say let's pursue that individual's property rights and requests and wants? Mr. Lisich expressed his concerns and feels that this ties into our policies and procedures workshop. He urges us to continue making progress on that front and how and who directs whom to do what.

D. RAY MARTENS

Mr. Martens referred to Councilman Reynold's concern about people coming in and talking to the Town Manager about what legal procedures they were supposed to follow. He advised he had done that with the intention of saving a couple of dollars for himself and the city. He thought there was a way to avoid everyone hiring attorneys. When he found out there wasn't, he decided to go out and hire an attorney. However, he thinks that is what the Town Managers role is and he thanks her for fulfilling her job. She helped him learn what the procedure was that he should follow. He feels the council could avoid their concerns if they give out an information sheet saying what to do.

Regarding the (Long) property, Mr. Martens advised he didn't care whether they bought it or not. His concern is more about the people who live on the dead end street with little kids who will have

to worry about tour buses and 30, 40, 50 cars a day. They have a right for us to guarantee sidewalks, some better lighting and other things to protect their kids on that street.

He is saving for his kids' college and doesn't want to give his money to Diamond Head, Mr. Martens stated. If the town takes them on and loses, they pay. He can't afford this.

E. BILL WHITAKER

Regarding the town's dilemma of filing reports and whatever relates to payroll and things of that nature, it might look into leasing its employees. He is a leased employee himself who owns and operates the Dairy Queen. All it takes is making one telephone call a week or whatever your payroll is. Your bank account is drafted and all your reports are filed for you. The cost may be a little bit cheaper than the route the council is now considering.

At the Traffic Committee meeting, the suggestion came up that the city of Fort Myers Beach could have their own volunteers to help and control their own traffic and the Sheriff's Department has volunteered to train those people at no charge.

Mr. Whitaker also urged that they not get into any turf battles.

F. PAT LOFFRENO

By not allowing people to their properties in certain cases, Mr. Loffreno feels that the tax base is being taken away from the county, the state and the town of Fort Myers Beach. We are taxpayers and we are going to pay for space that is vacant. On top of that will be a possible litigation that the town will have to confront. He was one of the promoters of the town and feels that litigation will possibly be the beginning of the end of the town.

ADJOURNMENT

Mayor Anita T. Cereceda adjourned the meeting at 11:00 P.M.

Respectfully submitted,

Lorraine Calhoun

Recording Secretary

CORRECTIONS TO THE MINUTES

MAY 20, 1996

(As recorded iii the minute: of June 17, 1996)

Page 13, paragraph D: "Ray Martens" should be "Ray Mertens"