

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JULY 29, 1996
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I CALL TO ORDER

The meeting was opened on Monday, July 29, 1996, at 6:40 P.M. by Anita T. Cereceda, Mayor.

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

Excused absence from meeting: Rusty Isler

II INVOCATION

The invocation was given by Tom Snapp, Pastor of Saint Peter Lutheran Church.

III PLEDGE OF ALLEGIANCE AND INVOCATION

All assembled recited the Pledge of Allegiance to the flag.

IV PUBLIC COMMENTS AND INQUIRIES ON THE AGENDA

None.

V APPROVAL OF THE MINUTES OF JULY 1, 1996, JULY 11, 1996, JULY 15, 1996 and JULY 18, 1996

MOTION: Made by Ray Murphy and seconded by Garr Reynolds to approve the minutes of July 1, July 11, July 15 and July 18, 1996. Passed unanimously.

VI REVIEW OF EXPENDITURES

MOTION: Made by Ray Murphy and seconded by Garr Reynolds to approve the expenditures as submitted. Passed unanimously.

VII PUBLIC HEARING ON STREET VACATION (RICHARD) AT 7:00 P.M.

Russell Schropp, the attorney for the petitioner, Mr. Richard, advised that what they were asking for was a vacation of a portion of the utility easement and also a portion of an area shown on a plat as a lagoon. Mr. Richard owns three lots in the Island Shores Subdivision, which Mr. Schropp indicated on a map he had prepared. The lots border on the lagoon area. Two structures are on the lots, one of which encroaches into a utility along the south side of the lots by about three feet. The other structure encroaches on the left side into the area that has been designated as a lagoon area although it is dry land and has been dry at least back into the '60s. They wish to clear title through eliminating the easements and lagoon area as shown on the plat. They have had no objections from the utility companies that have been asked to review the vacation request and no objections from the various governmental agencies that routinely have reviewed the request. Vacating the areas should have no effect on any public rights that were created by the plat.

Garr Reynolds asked why the easement was given originally. He was told that the plat was created in December 1950 and that the easements were created for utility purposes along all lot lines in this particular portion of the plat to run sewer, water, electric, and telephone lines. To Mr. Schropp's knowledge, this easement in particular has never been used for those purposes and all of the utility companies have indicated that they have no objection to the vacation.

The survey shows a drainage easement in the southwest corner. What effect would eliminating this particular easement have on the drainage easement? Mr. Reynolds questioned. Mr. Schropp

advised that they weren't seeking to vacate the drainage easement at all. The storm drain is completely outside of the area that they are proposing to vacate.

MOTION: Made by Ray Murphy and seconded by Garr Reynolds to grant the petitioner his request to vacate the easements on his property. Passed unanimously.

Discussion: Mr. Reynolds pointed out that the major portion the petitioner wants relief from is on the lagoon side. This was confirmed, and Mr. Reynolds advised he saw no problem with it.

Mr. FitzSimons asked if any correspondence had been received regarding the petitioner's request. Mrs. Segal-George advised that the Board of County Commissioners had planned to hear the case until it was decided that they did not have the jurisdiction to do so. All the parties that would be affected have been contacted and no opposition to the vacation has been received from any of the affected parties.

Councilman Reynolds also asked if any information the council had received other than what they saw here indicated that there would be a problem as far as easement was concerned. He was told no, that all utilities had signed off on this.

VIII PUBLIC HEARING OF ORDINANCE PACKET "E"

a. The Town of Fort Myers Beach Taking of Recyclable Materials Ordinance

The ordinance was read aloud by Mayor Cereceda.

MOTION: Made by Ray Murphy and seconded by Garr Reynolds to accept the ordinance in Packet E pertaining to recyclable materials. Passed unanimously.

b. The Town of Fort Myers Beach Commercial Waste Disposal Ordinance

The ordinance was read aloud by Mayor Cereceda.

MOTION: Made by Ray Murphy and seconded by Garr Reynolds to accept the Fort Myers Beach ordinance on waste disposal. Passed unanimously.

c. The Town of Fort Myers Beach Lot Mowing Ordinance

The ordinance was read aloud by Mayor Cereceda.

Discussion Councilman Reynolds feels that if there is something in here that is not enforceable, we should get rid of it because at present lot mowing isn't being enforced on the island. He feels that people should make plans for their property to be mowed while they are out of town. Ted FitzSimons feels that there is some activity going on. He advised he had seen a couple of reports from the County Code Enforcement, which has been acting as our code enforcement relative to lot mowing and there have been a few investigations. Most aren't in violation. The code presently allows for grasses and weeds to be 16 inches in height. Mrs. Segal-George stated that she was receiving phone calls regarding high grasses. It was questioned whether 16 inches was too liberal an allowance for grass height. Marsha Segal-George said that the town could decide on a different length if it wished. The 16-inch height was applied mainly to vacant lots. Asked if the county would allow 16 inches of growth in a neighborhood. Mr. Roosa advised that they might and that the limit for Cape Coral was 18 inches both in the open fields and in the neighborhoods. The lower you get, he suggested, the higher the expense of enforcement. It would have be an extreme case of neglect. The ordinance is generally under Health, Safety and Welfare to control unwanted pests and the dumping of rubbish. Ted FitzSimons feels that it is good to have the ordinance, which can always be changed. When time permits, Mrs. Segal- George indicated, we can start looking into the cost of trying to maintain a height standard.

MOTION: Made by Ray Murphy and seconded by Garr Reynolds to accept the Town of Fort Myers Beach lot mowing ordinance. Passed unanimously.

d. The Town of Fort Myers Beach Transient Merchant Regulation ordinance

The ordinance was read aloud by Mayor Cereceda.

Discussion: It was established that the statement on page 2, line 30 (No transient merchant shall sell, offer for sale or exhibit for sale any goods, wares, or merchandise on the right of way of any road, street or highway) has been removed and that transient merchant regulation is now under the town's jurisdiction.

Regarding allowing a transient merchant permit to be in effect up to 180 days, should this be adjusted for our town's circumstances? Mr. FitzSimons wished to know. Mayor Cereceda suggested letting it stand for this coming year to see what happens.

MOTION: Made by Anita Cereceda and seconded by Ray Murphy to accept the Fort Myers Beach Transient Merchant Regulation Ordinance. Passed unanimously.

Mr. Reynolds questioned the council regarding the noise ordinance that had been a part of Packet E. Mr. Roosa advised that this ordinance was still in draft form and had been pulled. One of the issues that came up when they reviewed it was the fact that the county had just been involved in litigation and there were portions of the ordinance that were subject to court action and were invalidated. Mr. Roosa met with the county attorney and talked with the attorneys involved in the litigation and they all felt that the ordinance was an important ordinance and the ruling they had applied was not an objective decibel-type standard. The case law supports that the more objective you can be, the better off you are. It is very supportive of this scientific objective standard for determining noise levels. Two deputies are trained to read decibels and they are both in our district. Noise enforcement has been repealed but it is still in the county ordinance.

Regarding refuse collection, the franchise allows refuse collectors to commence work earlier than the noise ordinance. Mr. Roosa advised he has taken out railways and shipping lanes and put in refuse collection.

Mr. Reynolds advised that the courts have never accepted decibel readings.

Mr. Roosa said that we'll provide the sheriffs with a copy of the draft ordinance and see what comments they have.

The noise ordinance will go on the agenda for another meeting.

IX FIRST READING OF ORDINANCE PACKET "F"

a. The Town of Fort Myers Beach Two-Wheeled Motor Driven Vehicle Ordinance.

The ordinance was read aloud by Mayor Anita Cereceda. Marsha Segal-George advised that a hearing has been set on the matter for August 5, 1996.

b. The Town of Fort Myers Beach Parking Vehicles Ordinance.

The ordinance was read aloud by Mayor Anita Cereceda. Marsha Segal-George advised that a hearing has been set on the matter for August 5, 1996.

X DISCUSSION OF DRAFT OF ORDINANCE PACKET "G"

a. The Town of Fort Myers Beach Night Sleeping on Beach Ordinance.

The ordinance was read aloud by Mayor Anita Cereceda. Marsha Segal-George advised that a hearing has been set on the matter for August 5, 1996.

b. The Town of Fort Myers Beach Fireworks and Sparklers Ordinance.

Attorney Richard Roosa advised that the county has decided not to have a fireworks ordinance. The court recently ruled it to be invalid and the county is not going to pursue it. This means that if we were still in the unincorporated area, there would be no fireworks ordinance. According to Ted FitzSimons, the question is do we want one of our own? Mrs. Segal-George noted that we have had discussions with the Fire District and that Gary Wicol, Fire Marshal, was here tonight. A lot of folks come to Fort Myers Beach on July 4 wanting to utilize fireworks. This was a problem on the last 4th of July. From the Fire Department's perspective, this is something we would want to do something about.

The trouble with the county ordinance was in the enactment procedure, not with the ordinance itself, it was learned. Mr. Roosa was asked if there hadn't also been a problem with the sale of fireworks and Mr. Roosa advised that the ordinance was challenged on this basis.

Gary Wicol addressed the group. He advised that the ordinance that was enacted last year by the county commission was solicited real strongly by the Fire Marshals Association. It was basically a two-part ordinance. Part of it was for public display, which as far as Mr. Wicol can tell is still being utilized. The main beef that his association had was that the Florida Statutes has an exception to the sparkler sales, allowing people that sign the bogus waiver to basically purchase illegal fireworks and then come to Fort Myers Beach with them. The exception was thrown out, Mr. Wicol advised, because it wasn't properly advertised at a public hearing. We had 35,000 people on the Beach on the 4th of July. Mr. Wicol, himself, caught three teenage boys setting off firecrackers in the Times Square area. When questioned, they said that their mom had bought them.

Once a purchaser of fireworks signs a waiver, it releases the retailer from any legal responsibility. They can sell fireworks to anyone. There is nothing in the statutes that say the person has to be any particular age. If you want to sell to a ten-year-old, you could. It's left up to the good judgment of the people who are selling the fireworks. Mr. Wicol said that we really haven't had any firework tents on Fort Myers Beach in the last five years, mainly because there is no space. But people can purchase fireworks from tents throughout the county. The incidents of injury from fireworks have not been high on the Beach. Statistically speaking, however, on one day a year more injuries are incurred from fireworks than from all other forms of injury combined.

The public display at the pier has been conducted very safely and responsibly, Mr. Wicol feels. Safety parameters are set up by the Fire District so that the possibility of an incident has been reduced. People guarding the pier are trained, licensed, bonded, insured to do their job. There is a business in the Times Square area, however, that encourages their patrons to set off fireworks on the 4th of July in the area with a total disregard to safety or property.

Mr. Wicol feels that the ordinance itself was solid. It was unfortunate that it was not properly addressed. He feels that there is some merit in an ordinance, however the biggest thing is enforcement. Over the last 100 years, with better education about the dangers, fatalities from fireworks have been reduced. There are communities in this country now that are totally without fireworks at all.

Ted FitzSimons asked for statistics on injuries due to fireworks. Mr. Wicol responded that they had a couple of minor injuries this past year. We have been very fortunate on Fort Myers Beach and have had no structure fires in recent memory and the injuries have been minor. On the 4th of July, Fort Myers Beach has the largest display in the county. We have increased manpower, which in turn costs the taxpayers more money but may be the deciding factor in the high safety rate.

Can we get the Sheriff's Department to help us in the incidents of illegal fireworks? It is Mr. Wicol's observation that the Sheriff's Department has enough people down here to handle crowds law enforcement-wise, but there is no way they can handle the fireworks. Mr. Wicol has gotten cooperation from the Sheriff's Department, however, and has had them confiscate fireworks from people. In the past the fireworks committee had deputies allocated, but Mr. Wicol doesn't know if that was the case this year.

There was no permit this year. The county bypassed their own regulation and the state regulation required them to issue a permit for the special display for the 4th of July. But since the town gave them permission, they felt they didn't need a permit this year. All that the county required was a bonding from the people who had the display in case the pier was damaged. We should possibly consider having some kind of fee or bonding. The display is inspected to make sure that it is safe. Mr. Wicol doesn't feel that the display itself is the problem. The major problem has been the sales from the tents.

A couple of years ago, according to Mr. Wicol, the county allowed a private resident to rent Bowditch Point at Christmas time for a party, and along with that was a fireworks display. The Fire District, however, did not allow the display until the resident agreed to have a fire marshal present. Then the district was paid for this service. Mr. Wicol feels that since the island has become incorporated, some of the ordinances previously in effect by the county have kind of slipped to the wayside. He feels that the 4th of July display is something that should require a permit.

Mr. Reynolds asked Mr. Wicol if, the way things now stand, he could call the Sheriff's Department in the event he saw fireworks being sold from the back of a truck. Mr. Wicol replied, absolutely. The ordinance that was thrown out basically pertained to tent sales.

Mayor Cereceda asked that Marsha Segal-George or John Gucciardo speak with Captain Erne at the Sheriff's Department and find out what we would be required to do in order to have adequate enforcement on the 4th of July, what it would cost.

Regarding recommended regulations within the town, Mr. Wicol said he'd love to see a complete

ban of the sale of fireworks. He advised that it wasn't legal to use fireworks just because they were able to be purchased unless they are state, fire marshal approved sparklers. He suggested more education in the community and a stricter enforcement policy. People should know that if they come to Fort Myers Beach, even on the 4th of July, they run the chance of having their fireworks confiscated.

The first reading of the ordinance will be on August 5, 1996, Mrs. Segal-George advised.

c. The Town of Fort Myers Beach Finance Ordinance

No discussion was held.

XI CONTINUING DISCUSSION OF DRAFT OF PACKET "D" (BOATING SAFETY)

Mrs. Segal-George noted that the council had all received today copies of the ordinance that Mr. Roosa had prepared with all of the possibilities merged into them with regards to water safety. She feels that she and John Gucciardo could meet with the jet ski and parasail operators on the island to discuss all the drafts and then bring the results of their discussions back to the council in the interest of saving time. Councilman Reynolds felt that this might set a precedent of having special groups conduct affairs that should be done publicly. He would rather have the operators share their opinions, pro or con, with the public and the council. Councilman Murphy did not see any harm in having group sessions to go over the nuts and bolts and specifics since it would come back to the council anyway. It would save the council the time and effort of meeting with the operators since they do have a busy schedule. Mayor Cereceda advised that every special interest group is the public. We have had a workshop which the jet ski operators attended and said everything that they wanted to say. Marsha Segal-George will only be meeting with them to get tighter definitions.

Attorney Roosa, who had not attended the workshop, advised he had been given a copy of the minutes of the workshop meeting. He went back through the ordinance and found a few other little things and underlined things that will be changed. The name of the ordinance is now The Fort Myers Beach Watercraft Safety Ordinance, rather than Water Safety Ordinance. Mr. Roosa explained some of the other changes he has made to the ordinance. He still needs some details, such as the size of the jet ski. Mrs. Segal-George stated that she understands there is a current size right now that is in common use, but that there is a new model or a next generation of jet skis coming out. She advised the council that all of the new language in the draft ordinance, such as limiting the size of the jet skis so that they can only go so fast and limiting the amount of licenses that were available, came out of the workshop that was held. Ted FitzSimons noted that size should refer to engine size.

Mr. Roosa feels that they should work from the combined ordinances and then if they want to break them down later into three ordinances, that would be no problem. The only exception would be that the last section on exemptions and penalties would be duplicated on all of the three ordinances.

Mr. Reynolds advised he still believes that the matters should come before council, but if they opt for a group meeting he would like for Ray Isler or Ted FitzSimons to attend that meeting. Mrs. Segal-George said that would be fine and that they could also hold another workshop if desired. She was just hoping to help them meet the deadline of October 1 as expediently as possible.

MOTION: Made by Anita Cereceda and seconded by Ray Murphy that Marsha Segal-George take the direction that she advised. Passed with three yes votes and one no vote from Garr Reynolds.

XII CONTINUING DISCUSSION OF BUDGET (WITH FULL PUBLIC INPUT)

A. LEE HAVERFIELD

Mrs. Haverfield of Turtle Time advised that she had heard rumors that \$4,000 has been allotted for the turtle budget. The \$4,000, she wishes to reaffirm, goes strictly to Code Enforcement and not to Turtle Time.

B. JOHN GUCCIARDO

Mr. Gucciardo advised that the proposed millage rate needs to be approved tonight. A particular form needs to be completed and given to the Property Appraiser no later than August 5. The budget that has been prepared has a proposed millage rate that is exactly the same as the millage rate for last year for the unincorporated areas, which was 1.0604. The council's direction is needed on

keeping that millage rate so that we can inform the Property Appraiser that the TRIM notices can go out based on that rate.

MOTION: Made by Ted FitzSimons and seconded by Ray Murphy that the millage rate remain the same as last year for the unincorporated areas. Passed unanimously.

C. TED FITZSIMONS

Mr. FitzSimons stated he had received a telephone call regarding the number of days required prior to our first budget hearing. John Gucciardo advised that the TRIM manual sets out particular days on which certain things need to be done and we have set our schedule up based on adherence to the TRIM manual. We have also asked Randy Oliver, our consultant on the budget, to review our scheduling and have been told that we are in compliance.

Mr. FitzSimons advised he had also had verbal commentary on the item that we have deleted from the budget, the \$20,000 for human services. Most of the commentary has been supportive of the item in the budget. Anita Cereceda reported that she has had a lot of people ask why we took it out.

D. JOYCE JACOBS

Ms. Jacobs is with the Harry Chapin Food Bank, which was established by the late singer/songwriter to help the needy. She advised the council that if they made a decision to help the needy in this area, the Food Bank is here to help expand any dollars they donated. They hold fund raisers and food drives and generally have about 200 donated items to give away. They get a little county funding and a little United Way funding as well as private donations. They are the only food bank in five counties and cover Lee, Collier, Charlotte, Hendry and Glade. They distribute over one million pounds of food each year. In Lee County alone they are able to save agencies over \$100,000 a month.

E. HAROLD HUBER

Mr. Huber reported that there is a Feed the Hungry program at the Baptist Church sponsored by the Ministerial Association. He asked Ms. Jacobs if her group supplied food to the Baptist Church, to which she replied, no, but they would be glad to. Any nonprofit group is eligible to come to them.

XIII REVIEW OF SCHEDULES

The council was advised of a memo in their packets pointing out some of the dates that will be coming up and how the staff is trying to schedule things. There will be a meeting right after Labor Day on September 3 with respect to the budget. On September 17 at 7:00 P.M. there will be a joint meeting of the council and the LPA with Victor Dover.

XIV COUNCIL MEMBERS' ITEMS AND REPORTS

A. RAY MURPHY

Mr. Murphy expressed his wish for a speedy recovery for Flip Harby.

B. GARR REYNOLDS

Mr. Reynolds suggested a port tax for boaters. According to Mr. Roosa, municipalities are limited as to the taxes they can impose. As soon as something is characterized as a tax, it becomes unlawful because it's not authorized by the Legislature. We would have to get an act of the Legislature to authorize a port tax. You can't have something determined by the number of patrons. If you charge so much per patron, then it becomes a tax.

Councilman Reynolds also asked for more details on workmen's compensation and was told that there is a statute under the workmen's compensation law (Florida Statutes 440) that requires everyone who contracts with a governmental agency to have their own workmen's compensation. This is a duty of the contractor and not the municipality. If the contractor violates the law by not having workmen's compensation, this does not impose any obligation on the city.

C. TED FITZSIMONS

Mr. FitzSimons complimented the staff on their magnificent effort in getting the Main Street grant request out. He feels it is definitely a step in the right direction and hopes it generates a favorable response.

The CRA project, known as the Estero Boulevard Project, was the local committee's concept of what the boulevard should look like. Mr. FitzSimons hopes that we can get back to

resurrecting the concept that Estero Boulevard needs our attention, not just for the traffic but from the refoliation point of view and the pedestrian safety point of view. He would like to see some kind of focus program going. He is not recommending that we have a CRA specifically for that type of item, but have something that focuses on making Estero Boulevard user friendly.

Ted FitzSimons asked Garr Reynolds if the Traffic Committee has ever touched on the subject of tolls relative to this community, if it has ever been resurrected. The response was, no.

Mayor Cereceda stated that she agreed with Mr. FitzSimons about the Estero Boulevard project. Estero is a main street that goes through every aspect of the community whether business or residential. She feels it would be a very important project for the town to undertake.

Garr Reynolds advised that the project was one of the main things they have talked about taking care of for about a year now. So far nothing has come of it. It needs to be done and done in a big way. It should be started from scratch and redone. He doesn't see the road being patched up anymore. He feels there is ample space down the island for three lanes and still have a good width sidewalk. Let's talk about a comprehensive job, he urged, landscaping, the whole works.

D. ANITA CERECEDA

Mayor Cereceda advised that for tracking purposes and convenience she would like for John or Marsha to investigate getting some type of credit card for use on business trips and seminars. Mrs. Segal-George advised that they could cut a check in advance for a seminar and also for a hotel.

XV TOWN MANAGER'S ITEMS AND REPORTS

Mrs. Segal-George advised we had received a postcard today from Dan Parker and that he has entered the town of Fort Myers Beach as a potential Olympic site for the year 2012. The first thing we have to address, she joked, is the parking issue.

Cable fees should be on the agenda in two weeks in front of the county commissioners. Even though the attorneys are still of the opinion that the county does not have to give us our cable fees, the administrative staff is making the recommendation to cut us loose and let us negotiate our own agreement with the cable company.

The question was raised as to who owns the parking meters that are on town right-of-ways. The county DOT says they belong to the town and that the town should get the revenues from those meters. The Parks Department says that they are their meters and it is their revenue and they have secured a legal opinion that says that the roads have not been officially turned over to the town. Next week we are going to have a meeting with all of the different county departments that have some connection with the road issue.

Another issue that has been raised is the Black Island Lovers Key issue. There is concern that if we do the kinds of things that everyone would like to do on Estero Boulevard, we won't be allowing Estero Boulevard to be used as an expressway to get to Lovers Key Black Island. There are those in the county who believe we must allow it to remain an expressway for access to the park.

There have been sidewalks constructed on the north end of the island in front of Pink Shell to Bowditch Park. We were not notified of it by the county. Mrs. Segal-George was told by George Crawford that it was an oversight, that they didn't think to tell the town yet the town is expected to maintain those sidewalks.

Mrs. Segal-George also advised that she has talked with George Crawford about the types of things we would like to do on Estero Boulevard. He told her that we would have to take the road if we try to narrow any part of the roadway and put sidewalks on both sides. This is one of the obstacles in the part of design work on Estero Boulevard.

We have had two copy machines on loan for the last few weeks and they have now been removed. All we have left is a copier in the back room that is constantly breaking down. Mrs. Segal-George asked for options regarding a copy machine. According to John Gucciardo, in the proposed budget there was a line item for capital expenditures of about \$30,000 and the bulk of that was going to be designated toward a copy machine. We had another line item on equipment lease and maintenance costs of about \$3,600 a year. It looks like we are going to be able to get a top-flight machine for about \$300 a month, which would include the lease payment as well as the maintenance. The maintenance payments on the machine we now have will average about \$120 a month. For \$300 we would be able to get something that would have everything we need, like collating, stapling, and three-hole punching. This would make the job of getting work out a whole lot easier for the volunteers. It has a volume limitation which we probably won't exceed for the first three years of a five-year lease and then it goes to .011 cents

a copy. We have already exceeded the volume limitation on the copier we presently have. As soon as the council gives direction, they can have Peggy Salfen make arrangements for the Ricoh copier to be brought in and to compare it to the Minolta and the Lanier which we have had on loan. Once they make a decision, they can go ahead with a lease. Financing for the Ricoh would be for three years. The council gave unanimous approval for having the Rico copier brought in to determine if it was the best machine to lease for their purposes. Garr Reynolds recounted how a mechanic had advised that the location of a copier in the front office was not a good idea because everyone had access to it. Any machine would have extra problems if not operated by certain designated people.

XVI TOWN ATTORNEY'S ITEMS

a. Proposal for legal service

After we filed an amicus curiae brief, Mr. Roosa advised, the developer's attorney filed a motion in opposition to our brief and in that motion he pointed out that the town's request to be treated as an amicus curiae in this action is improper. An amicus curiae serves as a friend of the court to offer its views on a particular issue pending before the court but is not directly affected by the outcome of the proceeding. Apparently that was persuasive to the Second District Court of Appeal because in today's mail Mr. Roosa got a short order saying that the motion for leave to file an amicus curiae has been denied and appellee Sunstream's motion to strike the amicus curiae brief is granted. Mr. Roosa said he didn't think that all is lost because first of all it is very rare that amicus briefs are stricken and so this will certainly be a case for consideration for the panel of judges. The judges that ruled on this motion will be the judges that will hear this panel.

When the county filed its brief, they said our hands are tied, we had no choice, we had to issue the permit. The appellate court now is saying that we are a party of interest because of our status as the town that will be regulating the construction of this facility and, therefore, we are represented by the county. Even though they have stricken our brief, I think the result of this is that they are now aware of this conflict, that we took the side of the appellate, not the county. Mr. Roosa feels we have accomplished some part of what we wanted to accomplish. He would have hoped that they would have been able to consider the brief in its entirety. There may be some benefit in this and the way we will know is when the written decision comes out. If they come out with a written opinion, no matter which way they go, Mr. Roosa thinks that we would have been instrumental in getting them to give their written opinion. Right now it's anybody's guess on how they are going to rule on this. A representative at the Florida League of Cities advised that when you are a newly incorporated municipality, you can't be represented contrary to the county.

Hours spent on preparing the brief amount to 29.6 hours, or \$3,700. This would still be charged on an hourly basis. He wishes that the judges had read the brief as he felt that it was a good issue and that we addressed relevant issues that were totally ignored by the county.

Attorney Roosa advised the council that they have been provided with copies of his proposal for legal services and he has some modifications to it. He would be in attendance at all regular and special meetings, but not workshop meetings. He urges the council not to combine special and workshop meetings because you can vote at special meetings. When he is unable to come to a meeting, Mr. Roosa's services would still be available to the council through his partners.

Mr. Roosa doesn't feel that our relationship with the county should be characterized as adversarial. We are partners in providing services for the residents of Fort Myers Beach. This was discussed among the council members.

When they meet with the county commission, Mr. Roosa feels that he should be there as well. It is only when it is at a hearing level or litigation level should it be done separately and on an hourly basis.

Mr. Roosa advised he is very happy about the prospect of serving as the town attorney, but that his terms need to be met. There is no need for a contract if they accept the terms of his letter. He has to give 30 days notice before he can withdraw as counsel, but in accordance with the charter, at any counsel meeting if there are three people who would like to remove him as counsel, this may be done. He feels that one of the most important parts of his role is to be sure that the town council in their conduct doesn't violate someone else's rights so that we end up in litigation.

Mayor Cereceda thanked Mr. Roosa for his letter outlining his terms. She thought it was fair and decent and that it falls within our budgeted range.

MOTION: Made by Garr Reynolds and seconded by Ray Murphy to accept Mr. Roosa's

terms as town attorney. Passed unanimously.

XVII PUBLIC COMMENTS AND INQUIRIES

(As above.)

XVIII ADJOURNMENT

Mayor Anita T. Cereceda adjourned the meeting at 9:50 P.M.

Respectfully submitted,

Lorraine Calhoun
Recording Secretary