

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 00-03

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, DECLARING SPECIAL ASSESSMENTS FOR THE RE-CONSTRUCTION OF PALMETTO STREET AND EASY STREET, PROVIDING AUTHORITY; RE-CONSTRUCTION OF PALMETTO STREET AND EASY STREET; PLANS AND SPECIFICATIONS, WITH ESTIMATED COST OF PROPOSED IMPROVEMENT; PUBLICATION OF RESOLUTION; PRELIMINARY ASSESSMENT ROLL; PUBLICATION OF PRELIMINARY ASSESSMENT ROLL; FINAL CONSIDERATION OF SPECIAL ASSESSMENTS; EQUALIZING BOARD TO HEAR COMPLAINTS AND ADJUST ASSESSMENTS; PRIORITY OF LIEN; INTEREST; AND METHOD OF PAYMENT; LEGAL PROCEEDINGS INSTITUTED UPON FAILURE OF PROPERTY OWNER TO PAY SPECIAL ASSESSMENT OR INTEREST WHEN DUE; FORECLOSURE; SERVICE OF PROCESS; EXPENDITURES FOR IMPROVEMENTS; ASSESSMENT ROLL SUFFICIENT EVIDENCE OF ASSESSMENT AND OTHER PROCEEDINGS; VARIANCE NOT MATERIAL UNLESS PARTY OBJECTING MATERIALLY INJURED THEREBY; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Palmetto Street and Easy Street are in desperate need of re-construction; and,  
WHEREAS, the Town was unable to obtain the consent of all of the benefited property owners;

and,

WHEREAS, the levy of mandatory assessments is the only method available for the re-construction.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA:

SECTION ONE: Authority. This Resolution is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 170, Florida Statutes, and other applicable provisions of law.

SECTION TWO: Re-construction of Palmetto Street and Easy Street.

- (a) There is hereby proposed the assessment of the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements, interest, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction and administrative expense.
- (b) The forgoing cost shall be assessed against all lots and lands adjoining and contiguous or bounding and abutting upon such improvements or specially benefited thereby and further designated by the assessment plat hereinafter provided.

(c) The total estimated cost of the improvement is \$96,446.00

SECTION THREE: Plans and Specifications, With Estimated Cost of Proposed Improvement. There is on file with the town clerk, an assessment plat showing the area to be assessed, with plans and specifications, and an estimate of the cost of the proposed improvement, which assessment plat, plans and specifications and estimate shall be open to the inspection of the public.

SECTION FOUR: Publication of Resolution. Upon the adoption of this resolution, this resolution shall be published once a week for a period of 2 weeks in a newspaper of general circulation published in the Lee County.

SECTION FIVE: Preliminary Assessment Roll. Upon the adoption of this resolution a preliminary assessment roll in accordance with the method of assessment provided for in this resolution, which assessment roll shall be completed as promptly as possible; said assessment roll shall show the lots and lands assessed and the amount of the benefit to and the assessment against each lot or parcel of land, and, if said assessment is to be paid in installments, the number of annual installments in which the assessment is divided shall also be entered and shown upon said assessment roll.

SECTION SIX: Publication of Preliminary Assessment Roll. Upon the completion of said preliminary assessment roll, the Town Council shall by resolution fix a time and place at which the owners of the property to be assessed or any other persons interested therein may appear before said governing authority and be heard as to the propriety and advisability of making such improvements, as to the cost thereof, as to the manner of payment therefor, and as to the amount thereof to be assessed against each property so improved. Thirty days' notice in writing of such time and place shall be given to such property owners.

- (a) The notice shall include the amount of the assessment and shall be served by mailing a copy to each of such property owners at his or her last known address, the names and addresses of such property owners to be obtained from the records of the property appraiser or from such other sources as the town clerk deems reliable, proof of such mailing to be made by the affidavit of the clerk, said proof to be filed with the clerk, provided, that failure to mail said notice or notices shall not invalidate any of the proceedings hereunder.
- (b) Notice of the time and place of such hearing shall also be given by two publications a week apart in a newspaper of general circulation the last publication shall be at least 1 week prior to the date of the hearing. Said notice shall describe the streets or other areas to be improved and advise all persons interested that the description of each property to be assessed and the amount to be assessed to each piece or parcel of property may be ascertained at the office of the clerk of the municipality. Such service by publication shall be verified by the affidavit of the publisher and filed with the clerk of said municipality.

SECTION SEVEN: Final Consideration Of Special Assessments; Equalizing Board To Hear Complaints And Adjust Assessments. At the time and place named in the notice provided, the governing authority of the municipality shall meet and hear testimony from affected property owners as to the propriety and advisability of making the improvements and funding them with special assessments on property. Following the testimony, the governing authority of the municipality shall make a final decision on whether to levy the special assessments. Thereafter, the governing authority

shall meet as an equalizing board to hear and consider any and all complaints as to the special assessments and shall adjust and equalize the assessments on a basis of justice and right. When so equalized and approved by resolution of the governing authority, a final assessment roll shall be filed with the governing authority of the municipality, and such assessments shall stand confirmed and remain legal, valid, and binding first liens upon the property against which such assessments are made until paid; however, upon completion of the improvement, the municipality shall credit to each of the assessments the difference in the assessment as originally made, approved, and confirmed and the proportionate part of the actual cost of the improvement to be paid by special assessments as finally determined upon the completion of the improvement, but in no event shall the final assessments exceed the amount of benefits originally assessed. Promptly after such confirmation, the assessments shall be recorded by the clerk in a special book, to be known as the "Improvement Lien Book," and the record of the lien in this book shall constitute prima facie evidence of its validity.

SECTION EIGHT: Priority of Lien; Interest; and Method of Payment. The special assessments shall be payable at the time and in the manner stipulated in the resolution providing for the improvement; shall remain liens, coequal with the lien of all state, county, district, and municipal taxes, superior in dignity to all other liens, titles, and claims, until paid; shall bear interest, at a rate of 8 percent per year, from the date of the acceptance of the improvement; and may, be made payable in equal installments over a period not to exceed twenty (20) years, if not paid when due, there shall be added a penalty at the rate of 1 percent per month, until paid. However, the assessments may be paid without interest at any time within 30 days after the improvement is completed and a resolution accepting the same has been adopted.

SECTION NINE: Legal Proceedings Instituted Upon Failure of Property Owner to Pay Special Assessment or Interest When Due; Foreclosure; Service of Process. Each annual installment provided for shall be paid upon the dates specified in said resolution, with interest upon all deferred payments, until the entire amount of said assessment has been paid, and upon the failure of any property owner to pay any annual installment due, or any part thereof, or any annual interest upon deferred payments, the governing authority of the municipality shall cause to be brought the necessary legal proceedings by a bill in chancery to enforce payment thereof with all accrued interest and penalties, together with all legal costs incurred, including a reasonable attorney's fee, to be assessed as part of the costs and in the event of default in the payment of any installment of an assessment, or any accrued interest on said assessment, the whole assessment, with the interest and penalties thereon, shall immediately become due and payable and subject to foreclosure. In the foreclosure of any special assessment service of process against unknown or nonresident defendants may be had by publication, as now provided by law in other chancery suits. The foreclosure proceedings shall be prosecuted to a sale and conveyance of the property involved in said proceedings as now provided by law in suits to foreclose mortgages.

SECTION TEN: Expenditures For Improvements. The governing authority of any municipality shall pay out of its general funds or out of any special fund that may be provided for that purpose such one half of the cost of any improvement.

SECTION ELEVEN: Assessment Roll Sufficient Evidence Of Assessment And Other Proceedings; Variance Not Material Unless Party Objecting Materially Injured Thereby. Any informality or irregularity in the proceedings in connection with the levy of any special assessment shall not affect the validity of the special assessment where the assessment roll has been confirmed by the Town Council.

The assessment roll as finally approved and confirmed shall be competent and sufficient evidence that the assessment was duly levied, that the assessment was duly made and adopted, and that all other proceedings adequate to the adoption of the assessment roll were duly had, taken, and performed as required by this chapter, and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby.

SECTION TWELVE: Severability. If any one of the provisions of this resolution should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this resolution, and in no way affect the validity of all other provisions of this resolution.

SECTION THIRTEEN: Effective Date. This resolution shall become effective upon adoption.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

Anita T. Cereceda	<u>aye</u>
Dan Hughes	<u>aye</u>
John Mulholland	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY PASSED AND ADOPTED this 24th day of January, 2000.

ATTEST:

By: Marsha Segal-George  
Marsha Segal-George, Town Clerk

Approved as to form by:  
Richard V.S. Roosa  
Richard V.S. Roosa, Town Attorney

Town of Fort Myers Beach

By: John J. Mulholland  
John J. Mulholland, Mayor