

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 00-05

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH,
FLORIDA, INITIATING THE CONFLICT RESOLUTION
PROCEDURES OF FLORIDA STATUTES CHAPTER 164
PROVIDING AUTHORITY; INITIATION OF CONFLICT
RESOLUTION PROCEDURE; DUTY TO GIVE NOTICE;
CONFLICT ASSESSMENT PHASE; JOINT PUBLIC
MEETING; FINAL RESOLUTION; SEVERABILITY; AND AN
EFFECTIVE DATE.

WHEREAS, the Town of Fort Myers Beach, intends to initiate the conflict resolution procedures provided by Florida Statutes Chapter 164 prior to initiating court proceedings (copy of Complaint attached); and,

WHEREAS, it is the Town Council's position that the Town has the first right of purchase of the water system from Florida Cities Water Company.

WHEREAS, the Town Council intends to assign its right of purchase of the water system to the Town of Fort Myers Beach Public Works Agency.

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 164 and 166, Florida Statutes, and other applicable provisions of law.

SECTION TWO: Initiation of conflict resolution procedure; duty to give notice.

Within 5 days after the passage of this resolution, a letter and a certified copy of the resolution shall be provided to the Lee County Manager by certified mail, return receipt requested. The letter shall state, at a minimum, the conflict, other governmental entities in conflict with the initiating governmental entity, the justification for initiating the conflict resolution process, the proposed date and location for the conflict assessment meeting to be held pursuant to s. 164.1053, and suggestions regarding the officials who should be present at the conflict assessment meeting.

SECTION THREE: Conflict assessment phase.

A conflict assessment meeting shall be scheduled to occur within 30 days of the receipt of the letter initiating the conflict resolution procedure.

- (a) Public notice shall be given for this meeting by publication in the Fort Myers News Press at least 10 days prior to the meeting.
- (b) The conflict assessment meeting shall be scheduled to allow the attendance by the appropriate personnel from both the Town and Lee County. The chief administrator, or his or her designee, for the Town and for the County shall be present at this meeting.
- (c) If the entities in conflict agree, the assistance of a facilitator may be enlisted for the conflict assessment meeting.
- (d) During the conflict assessment meeting, the governmental entities shall discuss the issues pertaining to the conflict and an assessment of the conflict from the perspective of each governmental entity involved.
- (e) If a tentative resolution to the conflict can be agreed upon by the representatives of the primary conflicting governmental entities at the conflict assessment meeting, the primary conflicting governmental entities may proceed with whatever steps they deem appropriate to fully resolve the conflict, including, but not limited to, the scheduling of additional meetings for informal negotiations or proposing a resolution to the governing bodies of the primary conflicting governmental entities.
- (f) In the event that no tentative resolution can be agreed upon, the primary conflicting governmental entities shall schedule a joint public meeting as described in s. 164.1055, which meeting shall occur within 50 days of the receipt of the first letter initiating the conflict resolution process from the initiating governmental entity.
- (g) After the conclusion of the conflict assessment meeting, any primary conflicting governmental entity may request mediation as provided in s. 164.1055(2).

SECTION FOUR: Joint public meeting.

Failure to resolve a conflict after following the foregoing procedures shall require the scheduling of a joint public meeting between the Town and the County. The Town shall have the responsibility to schedule the joint public meeting and arrange a location. If the entities in conflict agree, the assistance of a facilitator may be enlisted to assist them in conducting the meeting. In this meeting, the governing bodies of the primary conflicting governmental entities shall:

- (a) Consider the statement of issues prepared in the conflict assessment phase.
- (b) Seek an agreement.
- (c) Schedule additional meetings of the entities in conflict, or of their designees, to continue to seek resolution of the conflict.
- (d) If no agreement is reached, the primary conflicting governmental entities shall participate in mediation, the costs of which shall be equally divided between the primary conflicting governmental entities.
- (e) The primary conflicting governmental entities shall endeavor in good faith to select a mutually acceptable mediator. If the primary conflicting governmental entities are unable to mutually agree on a mediator within 14 days after the joint public meeting, the primary conflicting governmental entities shall arrange for a mediator to be selected or recommended by an independent conflict resolution organization, such as the Florida Conflict Resolution Consortium, and shall agree to accept the recommendation of that independent organization, or shall agree upon an alternate method for selection of a mediator, within 7 business days after the close of that 14-day period.
- (f) Upon the selection of a mediator, the conflicting governmental entities shall schedule mediation to occur within 14 days, and shall issue a written agreement on the issues in conflict

within 10 days of the conclusion of the mediation proceeding. The written agreement shall not be admissible in any court proceeding concerning the conflict, except for proceedings to award attorney's fees where the agreement may be used to demonstrate an entity's refusal to participate in the process in good faith.

SECTION FIVE: Final resolution.

If there is failure to resolve a conflict between governmental entities through the procedures provided, the entities participating in the dispute resolution process may avail themselves of any otherwise available legal rights.

SECTION SIX: 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 SEVEN: 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:

Town of Fort Myers Beach

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

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

Approved as to form by:

Richard V.S. Roosa
Richard V.S. Roosa, Town Attorney

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY FLORIDA

TOWN OF FORT MYERS REACH,
a municipal corporation, and TOWN OF
FORT MYERS BEACH PUBLIC WORKS
AGENCY, an agency under F.S. Section 180
Plaintiffs,

v.

Case No.

LEE COUNTY, FLORIDA, a political
subdivision of the State of Florida,
Defendant.

COMPLAINT

Plaintiffs, TOWN OF FORT MYERS BEACH and TOWN OF FORT MYERS BEACH
PUBLIC WORKS AGENCY, sues the Defendant, LEE COUNTY FLORIDA, and
allege as follows:

1. Plaintiff, TOWN OF FORT MYERS BEACH, (hereinafter referred to as "TOWN")
is a municipal corporation located in Lee County, Florida; Plaintiff, TOWN OF
FORT MYERS BEACH PUBLIC WORKS AGENCY, is an agency created by
ordinance under F. S. Chapter 180 (1997) (hereinafter referred to as "AGENCY").
2. Defendant, LEE COUNTY FLORIDA (hereinafter referred to as "LEE COUNTY"),
is a political subdivision of the State of Florida.
3. This is an action for specific performance and damages in excess of the jurisdictional
minimum of this Court.
4. The plaintiffs are entitled to relief against the defendants upon the following facts:
 - (a) On or about January 26 , 1999, LEE COUNTY entered into agreement (hereinafter
referred to as "AGREEMENT") with Brevard County, Polk County and Sarasota
County, which established the Florida Government Utility Authority (hereinafter
referred to as "G.U.A."). Copy attached as Exhibit "A"
 - (b) Florida Statute 163.01(3) reads in part:

As used in this section: . . . (b) "Public agency" means a political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, an independently elected county officer, . . .

(c) The AGREEMENT provides in SECTION 1.01 DEFINITIONS. "Public Agencies" shall mean any "public agency", as defined in the Interlocal Act, which shall have a portion of the Authority Facilities located within its boundaries.

(d) The AGREEMENT provides in SECTION 4.02 ACQUISITION OF UTILITY SYSTEMS BY AUTHORITY MEMBERS. (A) "Each Authority Member or other Public Agency in whose jurisdiction the Authority owns a Utility System, or a portion thereof, shall have the exclusive right to acquire such Utility System, or portion thereof."

(e) The forgoing provision, as to the portion of the system within the jurisdiction of the TOWN, (hereinafter referred to as "Town System"), was for the benefit of the TOWN, as a third party beneficiary.

(f) The G.U.A. assigned its rights to LEE COUNTY to acquire the Fort Myers System, which included the Town System. Copy attached as Exhibit "B"

(g) The assignment to LEE COUNTY of the Town System was obtained by LEE COUNTY by deception as part of a larger area which LEE COUNTY had proper right to acquire all without the knowledge or consent of the TOWN.

(h) LEE then, by separate addendum, severed the Town System form the Fort Myers System (Copy attached as Exhibit "C") and thereafter the COUNTY purchased the system servicing the un-incorporated area of Lee County.

(i) LEE COUNTY now holds the exclusive right to purchase the Town System.

- (j) LEE COUNTY had actual and constructive knowledge of the TOWN's valid exclusive right to acquire the Town System and nevertheless intentionally, knowingly, and without reasonable justification and excuse caused the breach of the contractual relationship between the TOWN as third-party beneficiary and the G.U.A. and the other member counties.
- (k) The value determined by LEE COUNTY of the Town System is \$3,330,255.00
- (l) The TOWN has complied with Chapter 164 Florida Statutes.
- (m) The Town has tendered the purchase price to LEE COUNTY and requested a conveyance of the real and personal property the subject of the assignment.
- (n) LEE COUNTY has refused to accept the tender or to make the conveyance.
- (o) The TOWN offers to pay the purchase price.

WHEREFORE based on the foregoing, Plaintiff prays that Judgment for the plaintiff and that the defendant, LEE COUNTY, perform the contract and pay damages, together with costs herein.

ROOSA SUTTON BURANDT & ADAMSKI, LLP
Attorneys for Plaintiff,
TOWN OF FORT MYERS BEACH
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Cape Coral, Florida 33904

By: _____
RICHARD V. S. ROOSA
Florida Bar No. 175714