

**FORT MYERS BEACH
TOWN COUNCIL MEETING
FEBRUARY 11, 1999**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Ray Murphy opened the meeting on Monday, January 25, 1999 at 6:31 P.M. Present at the meeting were: Mayor Murphy; Vice-Mayor John Mulholland; Council Members Daniel Hughes, Garr Reynolds, and Anita Cereceda; Town Manager Marsha Segal-George; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III PUBLIC COMMENT ON AGENDA

A MICHAEL BOND

Mr. Bond, representing West Coast Surf Shop, said that it has not been explained why the merchants' portion of the MSBU is so large when the town is already receiving all that revenue from parking, tables and ad valorem. It seems like a form of double taxation. He feels that the council needs to review the percentage paid by the town, because 30% seems too low. In addition the council needs to review the method. Front footage does not seem right. In addition, some owners receive benefit but are not assessed. Some receive 100% pedestrian traffic but are not assessed. Some such as West Coast have a large triangular lot and are assessed extra, more than their benefit.

B BILL WHITAKER

Mr. Whitaker said he basically agrees with Mr. Bond. He feels that the funds that are generated from tables and parking should apply toward the maintenance of the square. Some may question why revenue from parking under the bridge should apply, but those are their customers and their employees. It should go toward maintenance. Times Square is an asset to the merchants, but also to the whole town. The percentage is not fair. The business community is concerned.

C MARTIN YORK

Mr. York, of Beach Pierside Grill, wanted to talk about garbage. When they came into business, the dumpsters were in the corner of the park. But there was some trouble with Barbara Manzo of Parks and Rec and they were moved. He would like to see them put back in that area. There could be some sort of structure that would not be offensive. It could be made so there is no access to dump garbage except by those people who are supposed to. They could be their own trash haulers again and it would take the county out of the trash hauling business. It would minimize the cost. They had their rights taken away from them when the street was closed. If the park is not available for the dumpster, he would recommend putting the dumpsters back in the square and put them on rollers so they can be rolled out to Estero where they could be picked up several times a week. The only cost would be to pick up the spillage after Kimmins dumps them.

IV DISCUSSION ON IMPLEMENTATION OF MSBU

Mr. Reynolds said he thought Mr. York's comments were good. We had no choice about moving the dumpsters, and if we could get them back in that location we would. Some people don't want to give anything at all, such as Mr. Strauss, because he has no tables and he has his own dumpster. But all in the area benefit from the square. He thought linear foot was a good measure, but it is not the only one that can be used. Mr. Hughes said that he does somewhat agree with the comments about front footage. A straight front footage does not take into account all the people who are receiving benefit. There is direct benefit and indirect benefit. On garbage he tends to feel that Mr. Himmelmann's recommendation is favorable. He knows of no municipality that pays anything for garbage collection. It is always paid for by the users, not the municipality. Mr. Mulholland said he thinks that all merchants in Times Square should help pay for maintenance. He does not like the footage idea. Ms. Cereceda said that when the town came into being and the council agreed to accept the CRA project, we agreed to accept the maintenance. She maintains that it is the council's responsibility to see that it is paid for. It is the premier public space of the town. She is sure the town's responsibility should be more than 30% and she could argue that it is 100%. It is also the

premier public space of the county, so perhaps they should be a partner. The second issue is garbage. What Mr. York said is correct. The council eliminated their availability to have trash removed when we closed the road. We created a cost for them and now we want to pass that back. There surely is a way to create a fair system. All of those businesses have been there for many years and can probably give receipts that will show how much they have paid over the years. We could take that as a starting point to see how much they should be liable for now with perhaps some increase for the convenience of having the trash removed for them. But to penalize them when we have created the cost, even through there is benefit for being in that space, is unfair. They are being freaked out by the idea of such a large bill.

Mr. Hughes said we should also look at their volume of business compared then to now. There is a substantial increase in their business that is directly attributable to the improvements. You can't just look at the expense side, you must look at the income side too. Ms. Cerededa said she wouldn't disagree with that, but she said there are businesses that are benefiting from the CRA even though they are not nearby, such as Pirate Petes, simply because of the facelift on our community. Mr. Mulholland said that besides having all merchants pay, he also thinks the town should pay a higher share than 30%. He agreed we should look at the income because they have benefited. We have to look from the Lani Kai to Times Square.

Mr. Hughes asked if we can arbitrarily establish these assessments. Will there be a hearing? Can it go to a third party? Mr. Roosa said it is totally up to the town, but they should have a hearing to assure the equitable allocation of costs. It is up to the discretion of the council what to collect by ad valorem and what by MSBU. Any of these expenses would qualify for an MSBU. Mr. Hughes asked if they have the right to challenge. Mr. Roosa said yes because you cannot assess greater than the benefit to the property. Regarding garbage, he said that everyone would pay some garbage collection even if there were no need for this special allocation. So that is not part of a benefit unit. That is a service provided. It can be collected as part of the MSBU, but it could be collected even without the MSBU because it is for a service provided. It can be equitably allocated. A retail business selling T-shirts would generate more cardboard boxes but a restaurant would collect more vegetation and those costs are different. Also the frequency of pickup is higher for a restaurant. The trash hauler can help with the equitable assessment. You can allocate on one basis the cost of the garbage, and on a completely different basis, the cost of maintenance. He likes to think of the Times Square area on the nature of a condo. Even though individually owned, they do receive benefit from the collective capital investment of the pavers, lights, ambience, etc. Those expenses related to that amenity could be allocated like they are to condos. There is no set standard for condos--they can be equal or on a scale based on the number of bedrooms or on a square footage base. Whatever you feel is equitable is OK. He thinks in a commercial area, you should look at square footage because usually a larger area generates more garbage. Or you could use the size of the parcel of land. Mr. Hughes said he likes the idea of the council sitting as a board of equalization and adjustment. He said there would be some administrative overhead costs that would have to be factored into this also.

Mr. Reynolds said he thinks Ms. Cerededa should be involved in the discussion, but he wonders if she has a conflict. Ms. Cerededa said she has already asked Mr. Roosa and he said she has no conflict, but when it comes time to vote, she will decide whether to recuse herself. Mr. Reynolds wondered if their Kimmins bills have changed since the town entered into this. Brad Benson of Cozy Café and Sea Dreams said he used to have a dumpster that was also used by a T-shirt shop. Now he has two buckets and he uses less garbage than anyone down there. But he is still paying the same cost that he was for two dumpsters and he is using half. They are doing half of the business they used to do because they are on the back end of Times Square. His parking lot is gone so he lost everyone who came into his restaurant because his customers were locals. He is at the slow end, but it used to be the high end. Mr. Primeau, Mr. Benson and Mr. Strauss did not want this project and did not sign off on it. Mr. Primeau of West Coast Surf Shop said he used to have a big dumpster and 5 stores. Now he has one store and a rolling garbage can which is picked up three times an week and that is plenty. He can put his garbage on the road. Business has been tough. He lost a lot of parking spaces. He has some but nobody knows they are there. The people by Dairy Queen and Plaka benefit greatly. They are doing much better. Top O' Mast has shut down his restaurant and is mostly just parking cars. Winds and Mango Bay are getting a lot of benefit and they are not slated to receive any of this cost. Mr. Hughes said that those who are doing well are immediately next door. How do you lay that blame on the configuration of Times Square when they abut the same walkway? Mr. Primeau said he can't explain it but it is a fact. Mr. Hughes said some portion of success has to do with entrepreneurial ability and can't be blamed on the town. Mr. Primeau said some of that is true, but he and Mr. Benson lost their parking lot. He said his business is just now about getting back to where they were in

sales three years ago. Mr. Mulholland asked what he favors as the method to be used in the allocation. Mr. Primeau said several good ones have come up. He really takes a beating with the linear footage because he has the corner lot. From one side he gets no benefit and the trolley stop area is still in litigation. Getting the sales figures from these people could be delicate. He said there is some correlation with square footage, but not totally. For the restaurants who have the seating outside that distorts the figures. He is amenable to paying what is fair. Mr. Reynolds said some people refer to Times Square as the town park, but he does not think of it as a park at all. He thinks of it as a pedestrian shopping area, not a park. He suggested that we have a committee of some Times Square merchants who will get together with Mr. Himmelmann and staff to discuss this. He knows of no other place where the town pays someone's trash bill.

Mr. Bond said what would help the merchants is a decision by the town about what percentage they are going to pay. It would make it so the merchants can choose how their portion will be divided among the businesses. Location is everything. The business owners that lost parking spaces lost a significant thing. America is built on convenience. Mr. Murphy said you could debate the opposite. You can argue that closing it off is the attraction. Foot traffic in Times Square has increased drastically since it has been closed off. Mr. Bond said they have lived here since August of last year. He parks in the county lot if he can find a spot. If they can't, they turn around and go home. If they can find a spot, they park and go to the beach and then go home. Until he started working for Mr. Primeau, he had never even heard of his store. A lot of the pedestrian traffic is people like himself who come and leave. Parking spaces are important because the majority of their clientele was local. Visitors don't know the businesses are there. Each business has been affected differently, some positive and some negative. Some of the restaurant owners said their expenses have increased, particularly in maintenance and delivery because it is more expensive to receive deliveries. There is no parking for UPS or for Sysco Foods, etc. They must truck everything in.

Ms. Cerededa said we have talked about this for three years. Now the council has to decide what percentage the town will take responsibility for. We have to pick a number. Mr. Bond said once the number is picked the committee can better decide how to apportion their individual portions. Mr. Mulholland said the town is also a business with expenses and income. We are trying to run the town on an efficient basis just like the businesses are. We are not competing, we are trying to create an environment that helps the merchants because it helps the town. He asked if they have a magic number in mind? Mr. Bond said we need to go back and look at the true expenses in the area and what they were before.

Ben Warner of Kilwins said that they opened in November and they receive a lot of foot traffic. The Town needs to be careful about scaring new businesses that come into the area. New owners don't see the trash expense and other expenses when they start a business. He noted that the square looks great every morning.

Steve Maillakakis from Plaka said that the square has been nice and has been good to them, but up to a certain extent. Now the Plaka plays \$6000 a year for the chairs and tables. Unless it is high season, half of them are sitting empty. If it reaches the point where they have to pay more for garbage and more for sitting there, you begin to think it is not worth it. Everything has gone up. He requires more staff now because they have more tables, their providers have gone up in price, and maintenance has gone up. They are suffering.

Bill Whitaker clarified that the merchants do pay for their garbage collection. What we are talking about is that someone is now carrying it away for them which they didn't have to do before. Nobody is subsidizing them for their garbage. They are paying someone to do something that they used to do themselves for free. Regarding pedestrian traffic, he has always felt that all the businesses benefit from pedestrians who park in a central place and visit all the businesses. The other end is not enjoying the prosperity because the major player is not willing to participate. If they had put out chairs and entertainment, the other businesses would have benefited too. Mr. Benson has tried. He has put out tables and umbrellas and entertainment. But it is dead down there. Seafarers is getting benefit just like Winds and Mango Bay. He suggested that it is fair that all money generated in that area should go toward maintenance, and if there is any shortfall after that, the merchants should chip in for the shortfall. Mr. Reynolds said the money the town makes doesn't have anything to do with Times Square. That is part of the operation for the town. That should go into a general fund. If something needs to be done in Times Square that the town should pay for, it will come from that. He could see where we should pay the whole cost of maintaining the pavers that used to be the old street area. The businesses still need to clean in front of their own places. Picking up trash in the main area is the town's responsibility. Perhaps the merchants could set out their garbage near the bollards early in the day for Kimmins to pick up, so the town can get

out of the trash business. He doesn't see why we are into garbage collection. Ms. Cereceda said we are in it because Lee County will not permit garbage accumulation in Lynn Hall. There is no other way to collect trash because there is no truck that won't ruin the square. So we have to put the dumpsters off site. You can't expect an employee of the Dairy Queen to carry trash to the dumpster under the bridge.

Mr. Mulholland said that perhaps the town should pay 60% and that would in effect pay for the garbage. Ms. Cereceda said we are taking in \$15,000 from the tables and \$26,000 in parking which totals \$41,000. What portion of that should be allocated toward the maintenance cost? Mr. Hughes said he does not see the relevance of parking in this. Mr. Mulholland said he is not looking to give a free ride. He said they can double the size of their place and it doesn't cost them anything. Part of the agreement with the tables is that part of it is for the maintenance of the project. Mr. Himmelmann said \$42,000 is for maintenance all the way to the Lani Kai. Mr. Hughes said if the Town pays 60%, the new numbers would be \$25,200 for the town, \$14,400 for Times Square, and \$2400 for the other area. Mr. Primeau said that sounds pretty fair but you still have to decide how to divide out the \$14,400. Mr. Maillakakis said there are a lot of other businesses that have profited. But no portion of that amount has gone to them. He thinks 60% is fair if the 40% is divided with others in the area. If Times Square has to absorb the whole, he is not for it because his portion is too much. Mr. Murphy said that if the council agrees in principle that 60% would be the town's portion, what about the rest? Should we use front footage, square footage of the building, square footage of property, percentage of revenue? Mr. Roosa said everyone could pay a base rate then the difference could be allocated on some other basis. You can have a carryover budget so that if more is generated, their assessment would go down. Ms. Cereceda said we already paid a consultant to come up with a plan. Are we throwing that out? Mr. Himmelmann said he took Ms. Freshour's study and plugged in the correct amounts. Mr. Murphy asked if they are talking about including Mango Bay, Winds, Ocean Jewels and Seafarer's. He agrees with the principle but he is sure those people will come in and cry the other way. Mr. Mulholland said he thinks all merchants in the Times Square should be assessed, but he was not going to go down Old San Carlos. All the merchants in the Times Square Merchants Association should pay. Ms. Cereceda said that includes the Silver Witch on Crescent Street. Mr. Hughes said if we are talking about the maintenance it should be related to properties that abut what has been improved. That includes Seafarers, Mango Bay, Winds, Ocean Jewels, but not Old San Carlos beyond the properties immediately abutting. Ms. Cereceda asked about McDonalds and Pelican Sportswear. Mr. Himmelmann said you would have to go all the way down to Lani Kai including Waffle House, etc. if you are talking about all properties abutting pavers. The MSBU has to be fair and reasonable. Mr. Hughes said if you are on a roadway and you put in pavers, it helps the people across the street also. Mr. Roosa said that everybody is not equally benefited. You just have to say they are benefited then you go from there. Some properties would pay 25%, some 20%, some 10%, some 5%. Ms. Cereceda said we have two areas, the strip to the Lani Kai and the main area at the dogleg. What if we put in another classification that would include others? Mr. Murphy asked what happens when we move ahead with the Old San Carlos and Crescent MSBU and they are paying into that. Ms. Cereceda pointed out that that work is at the instigation of those business owners and is for undergrounding of utilities, etc. She asked if we could identify the businesses that we would include so Mr. Himmelmann could draw up another proposal including all these other businesses. Mr. Hughes said he feels they should leave the total at \$14,400 and that includes those properties that abut the pavers. Further down they split the \$2400. That would further reduce the ones that have been assessed. Ms. Cereceda suggested that Mango Bay and Winds, etc. should be in a new category rather than in with the others in Times Square. Mr. Hughes said he wants to include all the businesses across the street from the pavers. If you put in a sidewalk or a sewer in a street, both sides are assessed. Mr. Roosa suggested they might have 5% on that side of the street. You are only talking about 100% of the non-town portion. Right now that is 85% Times Square and 15% contiguous areas. If you put in a 5% area, it would drop Times Square to 80%. Mr. Hughes said all properties on both sides of the street all the way down to where the pavers end should be included, but some will pay a lesser percentage if they are not directly abutting the improvement but are across the street. Ms. Cereceda and Mr. Mulholland agreed that was a good idea. Mr. Hughes said that now that we have added all these additional properties, the council should rethink the idea that the town pays 60% because we have significantly decreased the amount the Times Square merchants will be paying. Mr. Mulholland said he wants to stick by 60% (although that is not in stone) but he likes the graduated amount for all the others. Mr. Murphy suggested sending this to the staff to crunch numbers with the extra properties and come back. Mr. Roosa said what we should work with is 100% of the property owners amount and allocate that among the property owners and then when you put a number to it, you will know how much each one pays. Mr. Hughes suggested 50% between those

directly abutting and those across the street. Ms. Cereceda suggested 75% to Times Square, 15% to the contiguous, and 10% to those across the street. Mr. Hughes said the proposal before them tonight has 85% in Section A and 15% in section B. Then you allocate that so that the properties across the street have 50% less allocation than those right on the pavers. The other question is what is the basis of the individual allocation, square footage of the building? Ms. Cereceda reminded the council that we have already done this work. Ms Freshour came up with the MSBU. All we have to do is leave this alone and put in another category. Mr. Hughes said he is rejecting the front footage allocation. Mr. Mulholland suggested square footage of building, not of the property. Mr. Murphy said that should be gross square footage, not first floor. Mr. Himmelmann asked if they only want to include the enclosed part of the building. Mr. Murphy said yes.

Regarding the trash compactor, Mr. Hughes asked if we intend to get it and who would pay for it. Mr. Reynolds said the town should handle some part of the garbage because it used to be a street, but it should be a small amount. Mr. Mulholland asked Mr. Himmelmann where the compactor would go. Mr. Himmelmann said they haven't figured that out yet, perhaps under the bridge. Nobody wants it. Mrs. Segal-George said we have no other location except where it is now. We have been working on this for 3 years and we have no place else to go. Mr. Speirn-Smith doesn't like where it is now. There are some things we can do to create a structure around it, maybe landscaping. Mr. Murphy asked if the compactor would be more palatable than dumpsters. Mrs. Segal-George said we have not wanted to go to the compactor until that whole area is planned. We know there will be development in the area and we did not want to invest in a compactor yet. Mr. Hughes said he would favor renting a compactor and spending the minimal amount to pour a concrete pad, which is not irreversible. Rental is only \$299 per month and the cost can be added to the section C cost and prorated. It will have a minimal affect on the town and merchants in terms of expense. Mr. Murphy asked if we have to commit to a year's lease. Mr. Himmelmann said yes. Mr. Reynolds asked if we purchase compactor, what would the cost be for taking it away each week? Mr. Himmelmann said the merchants would pay for that in their Kimmins bill, in addition to what we are assessing them. Mr. Hughes asked if having the compactor would reduce the cost. Mr. Himmelmann said no, it would just make for a cleaner area and would be less offensive.

Ed Lawler said you have to think about electricity and water at the site so you can keep the area clean where you put the compactor. Ms. Cereceda said we have done extensive research on trash compactors and there is not one that is not a pigsty. It is a high maintenance, high expense item. Mr. Murphy suggesting tabling the compactor discussion tonight.

V PUBLIC COMMENTS

A BILL WHITAKER

Mr. Whitaker said the added expense of pickup is something they didn't want but the county bestowed upon them. Now the town says they have to pay for the county's decision. That is not exactly fair. Mr. Murphy asked what his recommendation would be. Mr. Whitaker said he doesn't have an answer of where to put it. They were happy where it was, but that has been closed unless we buy the park. He just thinks they shouldn't bear the total burden. The town should accept some responsibility.

B NORM PRIMEAU

Mr. Primeau asked why we don't investigate taking over the park. He thinks it is a money-maker. It would solve a lot of our problems. Ms. Cereceda said she could not entertain the notion of putting trash on that valuable piece of property. Mr. Reynolds said it would be cheaper and more convenient. Mr. Hughes said there is some merit in taking over the park but he does not necessarily think that would solve the garbage problem. Mr. Reynolds thinks it is worth an effort to go back to the county and ask to put the dumpsters back there.

VI ADJOURNMENT

The meeting adjourned at 8:53 PM.

Respectfully submitted,
Peggy Salfen
Recording Secretary