

**FORT MYERS BEACH
TOWN COUNCIL MEETING
FEBRUARY 23, 1998**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, February 23, 1998 at 6:30 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Ray Murphy, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by Mayor Cereceda.

IV PUBLIC COMMENT ON AGENDA ITEMS

A JENNIFER KAESTNER

Ms. Kaestner asked the Council to appoint her to the LPA. She is not seeking the position because of her age, but because of her experience as a working parent/volunteer. She volunteers at the rec center, the Beach School and youth sports organizations. Her perspective is not business, tourism, or retirement. Her perspective is families with kids, and the LPA has no advocate for that group. In a small town you must maintain as much diversity as possible.

V APPROVAL OF MINUTES: JANUARY 27, 1998; FEBRUARY 2, 1998; AND FEBRUARY 12, 1998

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that the minutes be approved as submitted. The motion passed unanimously.

VI REVIEW OF FINANCIAL REPORTS FOR JANUARY

The Council accepted the financial reports as submitted.

VII COUNCIL MEMBER ITEMS AND REPORTS

A GARR REYNOLDS

Mr. Reynolds commented on the question of legal representation since he was not at that meeting. He thought another item was left out of that discussion that regarded insurance coverage. It is supposed to cover public officials' liability and he feels there is a gap. He said he is being sued and is receiving no legal or financial assistance from the town. Even though he is a neighbor, he feels that most of it came about because he is a council member. He would like the council to think about this because he feels they are all exposed. He asked Mr. Roosa and Mrs. Segal-George to check out why he is not covered.

He asked whether the St. Patrick's and Shrimp parade could be combined since they are so close together.

B RAY MURPHY

He reported that plans are going along well for the St. Patrick's Day parade and they are looking for more participants. He said that he expects to see the council members in the parade.

He had his first meeting with people on San Carlos Island on Friday. The conclusion was that the best thing was to have a workshop with the council regarding their plans and intentions, perhaps in May. It is his understanding that the DEP permit is still active but has been returned to them for more work.

C JOHN MULHOLLAND

Mr. Mulholland said people are unsure of how the fire control district could be consolidated with Lee County. He asked Mr. Roosa to prepare a briefing paper outlining the steps that

would be required. Mr. Roosa said that John Manning has assured him that the county is not interested in those fire districts that serve a municipality. He said the study is not to include municipality districts. He will check with the county attorney's office what their plan is.

He gave an update on the MRTF. They have passed a resolution to encourage the council to take all steps possible to stop development on Mound Key. Also Nancy O'Shea has had to decline the nomination to the MRTF. The other applicant is only a part-time resident so he has withdrawn his application. He asked the staff to repeat the process of seeking applicants for the vacancy. Eileen Barnett was elected vice-chair. He said they are also working on a town anchorage at Matanzas Pass and are talking about funding options.

He thanked the staff for the public safety workshop and expressed his support for the idea of a comprehensive plan element on public safety.

Regarding sewerage, he thanked the staff for keeping them updated on this problem. A state of emergency exists concerning recent spills. It underscores the fact that the town must have more control and input into the operation of the plant. He requested staff to identify the steps necessary for town involvement.

D TED FITZSIMONS

Mr. FitzSimons asked that a requirement be made that a traffic study be done any time a CPD is processed. He wants the study be done by the town so that it is in our best interests. Mr. Roosa said that traffic studies are not objective and that courts do not consider them as persuasive arguments. Since we have a constrained road, traffic impact is not considered relevant. Mrs. Segal-George noted that that will change once we have our own comp plan. Mr. FitzSimons said it seems that we should at least be armed when we go into court. Mr. Reynolds asked if the council could get copies of the CPD applications farther in advance. Mrs. Segal-George pointed out that the neighbors are notified before the LPA hearing and then it is re-posted before the council hearing so it cannot be viewed as a surprise.

He raised the question of a curfew for the town. He asked Mr. Roosa and the staff to respond regarding the implications of a curfew of 11:00 PM for persons 18 and under. He said Fort Myers has one and their kids will have to hang out somewhere.

He would like a feasibility study of how to go about changing legislation so that TDC money generated would be kept by the municipality that generates it, based on the impact that tourism has. We generate 20% of the TDC dollars and we don't get full value back. Mr. Roosa said perhaps we could generate a resolution and try to get support from other municipalities that would benefit from the change.

He asked about the LPA recommendation on Mound Key. Staff noted that it will be on the agenda for next week. It was agreed that the council wants to support the preservation of Mound Key.

He requested a proposed ordinance that reduces over the next three years the launching of motorized vessels from our beaches. He said we should issue no new commercial permits and after three years all existing ones would terminate. We have to protect our visitors and he doesn't think we are doing everything we can. He asked Mr. Roosa to bring forward an ordinance or a modification to our present ordinance.

E ANITA CERECEDA

Mayor Cereceda said she spoke to the Chamber last week and told them she doesn't think there is anything we can do about traffic, which has always been her position. Since then she has gotten a lot of hostile phone calls and letters saying there must be something. Most come from the seasonal residents. The main complaint has been the traffic approaching the island in the "right hand cheater rush lane." She doesn't know what can be done about it but we should at least talk about it and consider having a community workshop on traffic because she can't tell them we are doing anything or that we have any good ideas. Mr. Gucciardo said the Chamber traffic committee has been working on this and that FDOT and LDOT now understand the result of building those extra lanes and have agreed to try additional signage prior to the light that there is island traffic and local traffic. Hopefully we can get more sheriff's enforcement. Mr. FitzSimons noted that before the widening of the road, traffic used to be stalled back to Summerlin. Now the same traffic is simply stalled in two lanes side-by-side. Mr. Mulholland said he feels that much work has been done on the traffic element and they should consider that first before bringing in the whole community. A lot of people do not know what is going on.

VIII PUBLIC HEARING: SPECIAL EVENTS ORDINANCE

Mayor Cereceda read the titles. The public hearing was opened.

A FLIP HARBY

Mr. Harby said he is not an advocate of micro-management of our lives. This ordinance says we want to regulate anything in the form of a gathering on the beach. The shrimp festival, the fourth of July celebration and the boat races have all been going on for years and he doesn't know that they need to be regulated. He feels that the parking provision is unfair and that everyone will fail that. If the application is denied, you appeal to the Town Manager, not to our elected officials, which he does not like. Also there are many service organizations that sponsor small events (such as the health fair held at Bay Oaks last week.) Will they need insurance, bonding, parking, etc.?

The public hearing was closed.

Mr. Mulholland said that section 4 relies on the Sheriff's department to control the content of the event. But they won't even disclose how much coverage we get on the beach and he doesn't have too much confidence in them. Mr. Gucciardo said we are attempting to take two different, potentially conflicting, county procedures and condense it into one more simplified, user-friendly town procedure. We have eliminated the rule that it must have 1000 people in order to be a special event rather than a temporary use, and said that what we want the event sponsor to do is show us that the sheriff and the fire district have been informed and their concerns have been met. We are not trying to dictate what those concerns should be--merely that they have looked at it. If they feel it needs extra deputies or fire-proofing for the tent, that is their requirement. Mr. Reynolds said he is concerned that they must meet conditions set forth in the application and "and as required by the Town Manager or designee." He fears you can add anything you want, and he feels it should be spelled out. Mrs. Segal-George asked how you could know what conditions if you don't know what the event it is. Mayor Cereceda said the appeal to elected officials is a valid point. But the charter establishes a council/manager form of government, which puts the town manager as the chief administrator of the town and the ordinances which the council passes. It is the town manager and her staff that have to do the job. Mr. Reynolds said that previously under the county, an appeal did not go to the county administrator, but to a hearing examiner. We have a hearing examiner that we call the LPA. He thinks we should have a committee or the LPA for appeal, and then the council can look at the report and overrule it if they want to. Mr. Gucciardo said it is his understanding that the hearing examiner is for land use and would not be appropriate for a special event appeal. Mr. FitzSimons said that if the Town Manager felt like it was too nebulous, she can bring it to the Town Council for direction. He is in favor of this ordinance because he thinks it is necessary. We have had too many unannounced events that just happened. We attract special events and we need to control and administer it ourselves. Mayor Cereceda said that the intent is not to prohibit anything, but to have people take responsibility for the impacts that they create for the town. Mr. Murphy said that people already had to go to the county for permits, and now they can come here instead, and the fees will stay here. Mr. Reynolds stated that in section 10, he would like to change the wording to "temporarily revoke" a permit. Again, you are putting all the responsibility on one person. He hates to see one person have total say-so.

Motion: Mr. Reynolds moved that the word "temporarily" be added to section 10 after the words "shall have the power to". There was no second. The motion failed.

Motion: Mr. Reynolds moved that in section 4 the words "on a temporary basis" be added after "as required by the Town Manager". There was no second. The motion failed.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the ordinance be approved. The vote was as follows: Mr. Mulholland, aye; Mr. FitzSimons, aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The motion passed unanimously.

IX FIRST READING: BUSINESS INSPECTION ORDINANCE

Mayor Cereceda read the titles. The public hearing was set for March 16 at 6:30 PM.

X RESOLUTION ON INVESTMENT FUND

Mr. Gucciardo noted that at the last meeting the Council determined to invest with the League of Cities bond investment fund. This is merely the resolution that is necessary to complete the action. Mayor Cereceda read the titles.

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that the resolution be adopted. The motion passed unanimously.

XI OLD BUSINESS

A REQUEST FOR MATCHING FUNDS FOR BIKE RACKS (MAINSTREET)

Shawn Holiday, director of the FMB Mainstreet program, said that the design committee has talked about some projects that would have impact on the beach to show that the program is viable and impacting the residents' lives. They thought the one program that would have the most impact would be a bicycle rack granting program. Businesses and any public institution (library, Bay Oaks, etc.) could apply for a matching grant for bike racks. In some small way that could emphasize alternate ways of traveling rather than driving. Mainstreet has \$2000 dedicated toward this from the original state grant. They are asking for the Town Council to match it. The plan is to pay up to \$100 toward a bike rack as long as it is at a publicly accessible building. Acceptable bicycle racks would be preselected by the committee. It was clarified that the town's portion would come out of transportation funds.

Motion: Mr. FitzSimons moved and Mr. Mulholland seconded that the town match funds with Mainstreet for bike racks. The motion passed unanimously.

B CONTRACT WITH HOWARD MARLOWE AS BEACH LOBBYIST

Mr. Gucciardo said this was discussed at the last meeting, and he gave them a memo of information that he gathered at the Coastal Advisory Committee this afternoon. One issue is whether the town should contribute toward last year's contribution. The council agreed in principal to pay one-third of this year's fee (along with the county and Gasparilla). He went back to see what exactly Mr. Marlowe had accomplished last year for the Town before we had a formal agreement, and the two most important were: his success in having the Corps GRR study get funded and go forward; and his input in having the channel dredging project reimbursement money come from the federal government. It is the CAC's opinion that neither of these would have happened without the lobbyist. Mr. Reynolds said he does not see why we should be asked to pick up last year's bill. Mr. FitzSimons said that we are Lee County's beach, and why should we have to underwrite the expense of something that promotes the renourishment effort of Lee County. Mayor Cereceda pointed out that ultimately the question of whether we do the project will come back to us. Mr. Murphy said the other side of the equation is the safety issue for the residents in case of a major storm. Mayor Cereceda said this money would be to keep our options open and keep us in the funding loop. The money would come out of either consulting or from FEMA and beach related issues.

Motion: Mayor Cereceda moved that the council approve the expenditure of \$13,300 for Mr. Marlowe's contract. There was no second. The motion failed.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that \$8300 be approved for this year. Mr. Murphy, Mr. Reynolds and Mr. Mulholland voted in favor of the motion. Mayor Cereceda and Mr. FitzSimons voted against the motion. The motion carried.

C ANNUAL TOWN REPORT

Mrs. Segal-George said that at the last meeting she made a small presentation on this, but she brought it back because she didn't feel that she had adequately advised the council about what it would entail, and what some other cities and towns have done with it. Larry Ihnen said that Mr. Mulholland had just stated the essence of this idea: a lot of good things happen in this town but a lot of people don't know about them. An annual report is about communications. It helps promote community. He showed some ideas of what it may look like, and he also showed an actual report from another entity. Sanibel put a questionnaire in their last report and got a 40% response. It will be 4-page, 4-color and will come out on April 15 for a total cost of \$3375.40.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the item be approved. The motion carried unanimously.

D ESTERO BOULEVARD AND SOUTH END SIDEWALK UPDATE

Mr. Gucciardo said the council had directed the staff to write to the county to see if there was interest in entering a dialog about the town taking over Estero Blvd. Mr. Mulholland has asked questions about what the gas tax income will be to the town, what county budget items are there for the maintenance of Estero, etc. We have not heard back yet from the county if there is any interest, but if there is, those questions will be discussed then. Regarding the south end sidewalks, we have a final set of plans now which is going through the permit stage and should be approved within weeks. Then it will be put out for bid and awarded by July, and the state has said they have every intention of sticking to the construction timetable of August or September. The plans include keeping the sidewalks within existing right of way so we won't have to obtain any easements.

XII TOWN APPOINTMENTS

A VACANCY ON LOCAL PLANNING AGENCY

The vote at the last meeting was a tie between Dave Smith and Jennifer Kaestner. The Council held a secret ballot again. Mr. Roosa reported that Mr. Smith was the winner. He will get sworn in at the next LPA meeting on February 24.

XIII TOWN MANAGER'S ITEMS AND REPORTS

Mr. Gucciardo asked for feedback about how the council felt the off-duty deputies were working out. Mr. Reynolds felt the deputies were stopping the traffic too often to let pedestrians cross. They should let it back up some. Mr. Mulholland agreed. Mr. Murphy questioned whether they were actually there. Mr. Gucciardo said he has gotten those complaints from others also. He plans to have a meeting with the person who schedules the off-duty officers to see if we can come to a better understanding of what we think we are buying. He said one of the options would be to replace the sheriff's deputies with Florida Highway Patrol. Mayor Cereceda suggested that we very clearly state to anyone we contract with exactly what we expect from them for the money we pay. We want aggressive traffic flow control and pedestrian safety, not necessarily pedestrian courtesy or accommodation. Mr. Gucciardo said he has issued memos so he thinks the communication is good, but they are not hearing.

He also said there have been a series of incidents in the back bay recently, probably due to the rough weather. We have had a couple of boats break loose or bang into each other because they were improperly moored. The Coast Guard and Florida Marine Patrol indicate that they consider themselves a complaint-driven agency. They need direction from the council if they are to aggressively enforce the regulations that are in place. The MRTF is in the beginning stages of talking about a harbor plan. They suggested that those two entities be asked to aggressively enforce the non-local regulations, and to invite them to the process of developing the local regulations. Mr. Mulholland said the MRTF feels that perhaps they should hire someone, perhaps Mr. Spikowski, to help develop the plan, and that will require some money. There may be some grant money from WCIND. He said that one question is whether the town is liable for damage that takes place with our town waters. Even though it is a federal channel, the town is within its rights to set up an anchorage and put out mooring buoys and charge and have laws to enforce. A harbor master could be employed who could have police powers.

XIV TOWN ATTORNEY'S ITEMS

An order has just been issued by a local court in a code enforcement action. The order was prepared by the attorney for the defendant, and he and the Town Manager believe it is beyond the jurisdiction of the court. It regards the Lemon Twist business. He needs authority from the council to file a petition for rehearing on that order. Mrs. Segal-George explained that basically the court has issued an occupational license for a mobile food vendor and we do not allow mobile food vendors in the town. The court has created this and she is very concerned because we have denied many people the ability to vend on the beach except for the two grandfathered ice cream vendors.

Motion: Mr. FitzSimons moved and Mr. Mulholland seconded that Mr. Roosa be authorized to file a petition for rehearing. The motion passed unanimously.

XV PUBLIC COMMENT

A AL VAN HORN

Mr. Van Horn said that as a member of the chamber traffic committee and a member of the transportation element committee of the comp plan, he wanted to address some of the traffic comments.

He agrees with Mr. FitzSimons that there needs to be some kind of traffic study for new development. He hopes that can be in place before we go through the entire process of the comp plan. Regarding the traffic problem on San Carlos, he stated that the traffic committee has made that a priority issue, and he thinks people should be aware of what has gone on before, before we start creating new meetings. The traffic element contained 113 pages and covers a great deal of territory. You can have public hearings forever and all it is going to do is generate quick emotion by people who are upset and have not responded to the other requests in the past and think they can reinvent the wheel. If we hear a new idea out of the "experts", it would be a rare occasion. There is a lot happening already that is going to answer the concerns.

B DAN PARKER

Mr. Parker said the right hand lane is a sore subject, but it is legal for any driver to take that right lane all the way to the point that says right turn only. Everybody has that same privilege. We have other people on Estero who are directing traffic (letting cement trucks in), and our school crossing guard. Why don't we get some civilians to direct traffic down at Times Square for a cheaper price than off-duty deputies, although he understands the liability. He and Mr. Gaydos would be happy to provide uniform shirts.

C BILL PERRY

Mr. Perry of Aqua Sports said he understands how Mr. FitzSimons feels about the death of the jet skier on the beach, because he was very upset too. He checked into it himself, spoke to the operators, checked out the machines, etc. He feels that they followed all the rules that are in place. To eliminate personal watercraft from being launched from the beach would be too extreme. There are other plans that could be initiated that would make it even safer. If you eliminate it from the beach, they will be launched from Carl Johnson and private residences on the back bay. You will still have personal watercraft on the gulf and even more on the back bay. If you are talking about eliminating them for safety, you should also ban cars from Estero because of all the accidents, DWI, pedestrians being hit, etc. He has two possible solutions to make it safer: fewer watercraft at each location, and better patrols. For years he has had the policy that if someone is renting, he has someone out there too, either his parasail boat or another personal watercraft. When he has two or more boats rented, he has a personal watercraft out with the customers.

D JOE CROKER

Dr. Croker said that the recent death does not have to reflect poorly on the beach. If we were talking about teenage kids who were under the influence and were unsupervised, then we could think in terms of restricting their use of the watercraft. He has never driven a personal watercraft, but he does drive an automobile, and if you are going to get behind the wheel of any motorized vehicle, it takes responsibility on the part of the driver. You cannot legislate responsibility and no amount of legislation will stop accidents from occurring. The #1 killer is heart disease and the #1 cause is ingestion of fat, so why not ban all foods containing fat from the island. It is up to us to exercise responsibility. Regarding extra signage on San Carlos, one time he counted informational signs from Tarpon Road to the traffic light and there were 386 informational signs (everything except the name of the street.) Maybe if we get rid of some of the signs on this island, traffic could move a little faster because people wouldn't be driving slow enough to read them all.

E CHRIS SCHAAB

Mr. Schaab of CRS Beach Service, said he had a customer from England who lost his life on one of his jet skis. It was a very sad day. He has to agree that responsibility is something that everyone should take. Both men knew they needed to be aware of what is around them and to keep a safe distance. It bothers him that one business may be singled out to make life safer, when there are a lot of things that could be changed to make our life safer. If you change Estero to 10 mph, put someone at every crosswalk, and not allow people to swim during sting ray season, it will be safer. There is nothing he can do to change the accident, although he wishes he could. He hopes we don't go overboard about the restrictions because of this. He is sorry to everyone in the town and everyone involved.

F JOHANNA CAMPBELL

Ms. Campbell is sorry for the pain that is being suffered by the affected families. Anyone who is going to be responsible in this state has to have a driver's license. Anyone who gets on a jet ski should have a license to operate it too. Every year we lose at least one person on a jet ski or they turn out to be a vegetable. That area of the beach has too many operators and too many skis in the water.

G BETTY SIMPSON

On behalf of the LPA, Ms. Simpson thanked everyone who submitted an application to serve on the LPA. The two finalists were both excellent candidates and she hopes that Ms. Kaestner will continue to attend their meetings. She congratulated Dave Smith and looks forward to working with him.

XVI ADJOURNMENT

The meeting was adjourned at 8:45 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary