

**FORT MYERS BEACH
TOWN COUNCIL MEETING
MAY 4, 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, May 4, 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

Pastor Bob Stuckey of First Baptist Church of Fort Myers Beach led the Council in prayer.

IV PUBLIC COMMENT ON AGENDA ITEMS

There were no public comments.

V APPROVAL OF MINUTES: APRIL 20, 1998

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

VI PROCLAMATION ON SAFE BOATING WEEK

Mr. Mulholland read the proclamation declaring May 16 – 22 as National Safe Boating Week. He presented the proclamation to the members of San Carlos Bay Power Squadron. Lt. Cmdr. Robert Cowan accepted the proclamation.

VII PRESENTATION BY SOUTHWEST INTERNATIONAL AIRPORT

Larry Goldthorp, Director of Aviation Services with Lee County Port Authority, introduced the program on the airport noise compatibility program. Tom Nichols, Senior Operations Manager, presented a slide program. He said they receive an average of 17 complaints per month, but have had more since the publicity, but they also received 8 calls saying everything was fine with airport noise over the beach. They have a runway use plan that reduces louder takeoffs to the south over the beach. Departing flights using the Alico SID rarely reach the beach. The Runway 06 arrivals are aimed at a point 7 miles outside the airport, which is on the other side of San Carlos Bay. They try to keep most flights in these two areas. Aircraft do stray out of the goal areas, but their studies show that 67% are in the goal. Because their goal is to spread the noise impact, they cannot establish a "railroad track" over any one area. Victor Garcia, Federal Aviation Air Traffic Control Manager, said he is responsible for the safe and efficient movement of aircraft. Their radar coverage goes from Venice, to Lake Okeechobee to Marco island and out into the gulf. Almost all of our arriving traffic comes from the north, and 75% must approach from the east because of the prevailing winds. They have ILS instrument approaches. Aircraft stays at 5000' until they reach a point that is at a 45 degree angle from the runway, then they descend to 3000'. They must remain at or above 1600' until they reach the 5 mile point. If two flights are coming in at the same time, they must be separated and the normal flight pattern must go further out into the gulf and over the beach. They must go 1000 feet over the highest obstruction. On instrument approaches, they never go below 1600 feet. On visual approaches (when visibility is over 7 miles), once the airport is in the pilot's sight, they are cleared to descend on their own path to the runway. In weather approaches they must go wide of the storm, either to the east or north, depending on where the storm is located. Mr. Nichols said they have been asked to eliminate flights over the beach at night, but they cannot support that because it would put a curfew on the airport. They will be happy to work with the town on the altitude issue. He spoke about the fact that ultralights and parasails might conflict with airspace. Parasails are required to fly below 500'. If they want to go higher, they must report to the airport and the parachute must be marked. Ultralights cannot share

airplane airspace. Report violations to the Orlando office. He said that the proposed parallel runway will cause no change to the beach in flight patterns.

Tom Merrill said that if everything were exactly as shown in the slide presentation, there would be no problem. Even on clear days we have a lot of flights over the beach. The marker has been moved back from 5 miles to 7 miles, so it has pushed aircraft out further to the beach. He understands weather conditions, but there are many flights over the beach when there are clear skies. Altitude limits can be adjusted. What is most important is the future. We have a certain amount of noise now, but the first aircraft is not the issue, it is the 2nd or 3rd or 4th. With the airport expansion, there is going to be more of a problem. There will probably be more night flights. The airport should provide an impact study over the next few years for FMB: what type aircraft is used, what altitude they fly, how many flights go over the beach.

Dave Smith, a former pilot for United Airlines for 26 years, said he wants to look for solutions. He spoke about Runway 06 approaches. He estimates that 90% of the time, we have good enough weather that visible approaches are possible. His suggestion was to have the tower tell pilots to maintain 3000 feet until crossing the shoreline or the San Carlos bridge or 10 miles out. (This does not apply if they are approaching on the normal line, but only if they had to approach over the gulf and the beach.) That would still allow them to be in the 3% glide slope. Weather approaches are a different story and we understand completely if they must go over the beach.

Mr. FitzSimons said many years ago we got many Air Force flights that were very noisy, and he asked if we can expect those again. Mr. Nichols said we will occasionally get flights from Homestead, but not often. Some agencies such as the Coast Guard have ILS practice runs at the airport. Mr. Mulholland asked what is to prevent approaching planes from going a little below FMB, which is largely uninhabited, and eliminate flights crossing the beach entirely. Mr. Nichols said it is inefficient for the airlines to go 3 miles out of the way and 3 miles back. They are already using noise abatement practices, and according to the federal government, there is no one being adversely impacted by noise at this time, so it would be a hard sell to the federal government to make that change. Mr. Nichols said most flights are at 2000-2500' over the beach now, and they do not have a problem working with height issue with the residents, but not the flight pattern. Mr. Reynolds said he lives directly in the center of the flight path and he has not noticed any serious problems. He also said we have parasails flying at 1200 feet, and he asked if there are any enforcement people out there. Mr. Nichols recommended that the town notify the parasail operators of the FAA regulations. People can report violations to the FAA and to the sheriff's office. Ultralights are prohibited from sharing airspace unless they have a radio and are in contact with the tower. Mr. FitzSimons asked who establishes the 1600' level. Mr. Nichols said that is based on the 3% glide to the runway which provides a good stable approach for aircraft. If we raise the altitude to 3500', in order to intercept the glide slope, they would have to go out 14 or 15 miles and would have to go over the beach. They could fly all flights over the beach and not break any federal regulations, but they do not want all the airplanes flying over the same place, because it is not fair. Even if 33% go over the beach, that means the rest are going somewhere else. Mrs. Segal-George said she has had a meeting with parasail operators from all over, and none are flying within the 500' requirement. Some fly as high as 1800' feet in Hawaii. We can't enforce height, and this continues to be a grave concern. She also said that if someone sees an ultralight and calls in a complaint into Orlando, she's sure it would be gone by the time they get here.

Motion: Mr. FitzSimons moved that the staff be instructed to send a letter showing our interest in addressing the citizen's concerns about finding solutions to the altitude problem. **Discussion:** Mr. Reynolds seconded the motion. Mr. Reynolds said he would like to see Mr. Merrill and Mr. Smith be the liaisons from the town. **Action:** The motion passed unanimously.

An unidentified citizen asked if there was fuel dumping over the gulf, especially by the Coast Guard.

VIII COUNCIL MEMBER ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy had no items to bring before the Council.

B GARR REYNOLDS

Mr. Reynolds asked Mrs. Segal-George about the temporary parking lot on Santos and about her letter responding to the Call to Action flier. He thinks we should encourage citizens to speak up and that it should have been brought to council. Mrs. Segal-George said it is hard to respond to anonymous charges. The letter explained what happened about the permits on Santos. She feels the letter was

appropriate because allegations were made against her, and that she cooled off several days before she wrote her response. She does not feel she has to stand for defamatory statements that are not true and she has a right to respond. She said the council has not yet set a policy regarding temporary parking, and that all of them are illegally situated or operated. If the council wants to discuss and set some policy to make her job easier, that would be wonderful. Mr. Reynolds said he would like to bring that discussion again. He thinks that temporary lots should only operate about 3 months, or they become permanent. That is not fair to the permanent parking lots. Mr. Reynolds also said that he has asked the MPO to give more thought to Summerlin. It is becoming a road of crossroads. Developers should have to provide frontal or service roads to reduce the number of intersections. This is important to us because it is our evacuation route.

C JOHN MULHOLLAND

Mr. Mulholland said on April 25, members of the community cleaned the beach and painted storm drains. He gave special thanks to Terry Cain and John Naylor and the Pilot Club. He requested the staff to contact the fire district about setting up a joint meeting. He also said that, in an effort to communicate better with the citizens, he has set a meeting on May 14 at the Pointe Estero conference room at 7 PM. He will be there to discuss with anyone their feelings about the town. He also spoke in support of Mrs. Segal-George, who has been under attack recently. After listening to two late night messages about parking on Santos, he spoke with her and found out that the parking which had been authorized had been discontinued. In the Call for Action flier, she was accused in writing of putting a CPD plan for Santos Street in the Comp Plan. At the LPA meeting on 4/21 on the Comp Plan, no one spoke up to say that the town manager has no way of adding things to the Comp Plan. The town manager is only guilty of leadership and of trying to eliminate one of our major problems, parking. He applauds her for her efforts, and said it was an unjust attack.

D TED FITZSIMONS

Mr. FitzSimons said Sanibel is also wrestling with the curb cuts on Summerlin based on the evacuation problem.

E ANITA CERECEDA

Mayor Cereceda reported that she will be attending a community policing seminar in St. Petersburg. She said that if you go to an internet search engine and type in "Fort Myers Beach," you won't come up with our web page. Our web page is a tremendous asset, but people are not able to access it unless they have the exact address. She said that former council member Rusty Isler did a wonderful job in setting it up, and she suggested that the town staff find someone to come in and overhaul it. She also said that the council needs to revisit the policies on dogs on the beach and temporary parking. The sheriff's position and our position on dogs seems to be in conflict, and we need a clear-cut policy. She also said that there is a memo circulating about Publix, and she has been inundated with calls. She said the memo seems to imply that it was sent by the town council asking residents to call and oppose it. These fliers have been circulated in people's mailboxes, and she has called the postmaster to see about the legality of that. She also mentioned that she will be speaking at the Chamber on Wednesday about the Comp Plan.

IX OLD BUSINESS

A STATUS OF THE CHARTER

At the workshop with the Charter Review Committee, the council discussed many changes, mostly clerical. Mr. Roosa passed out a draft of an ordinance showing some of the changes that can be made by ordinance, but there might be others that the Council wants to add. Mr. Mulholland said he didn't think that Mr. Roosa had included the things the committee recommended and were presented to the council. Mr. Roosa said that some of the suggestions were for clarification and you can't change them-- you just have to interpret them. He would be glad to look at a list and make another try. Mr. Gucciardo said he recalled they separated out the questions to be sent to referendum. Then they set out a list of items that weren't for referendum but were for correction by ordinance. Mr. Roosa will get the list.

X NEW BUSINESS

A ADVERTISING IN QUALITY CITIES MAGAZINE

Mrs. Segal-George said that this was a request by the League of Cities to put an ad in their magazine at the convention. We have sent representatives to the convention, but we have not advertised before. Mayor Cereceda said she thinks we should put an ad in because many people are fascinated by the concept that we are running a government with only 5 people

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the town place a 1/4 page ad. The motion passed unanimously.

B EVALUATION OF TOWN MANAGER FORM AND/OR PROCESS

Mrs. Segal-George said that the form the council has been provided is the one used to evaluate the county manager. Mayor Cereceda said that she thought each council member should evaluate the town manager on an individual basis, and then place an item on the agenda of a future meeting to discuss any cost of living or merit increase. It was decided to place it on the agenda for June 1.

XI TOWN APPOINTMENTS

A MARINE RESOURCES TASK FORCE

Mr. Mulholland said Frank Schilling will be away for 4 or 5 months of the year and he agreed to remove his name from consideration. Each of the council members voted for two members. Mrs. Segal-George counted the votes and reported that Mr. Everham was elected, but that a runoff was needed between Mr. Polk and Mrs. Faircloth for the second spot. Mr. Polk was elected on the second ballot.

B PUBLIC SAFETY TASK FORCE

Motion: Mr. Murphy moved and Mr. Mulholland seconded that nine members be appointed to the task force. The motion passed unanimously. It was clarified that they would be appointed for one year.

Each Council member voted for nine people. Mrs. Segal-George counted the ballots and reported that the following task force members were selected: Dan Parker, Daniel Haggerty, Joseph Browne, Flip Harby, Charles Stiegler, Bob Gaydos, Tom Myers, Joe Croker, and Timothy Linskey.

XII TOWN MANAGER'S ITEMS AND REPORTS

A REQUEST FOR DONATION TO PROJECT GRADUATION GALA '98

Motion: Mr. FitzSimons moved and Mr. Mulholland seconded that \$250 be given to this cause. The motion passed unanimously.

B POOL

Mr. Gucciardo said that the county needs the minutes to reflect that the council wants the houses that are to be removed for the pool to be conveyed to the town. He does not know yet if the sale will be by public auction or sealed bid. We would probably need four weeks of advertising before the sale, so sealed bids might work better than an auction. Mr. Murphy asked if we should have them inspected first. Mr. Gucciardo said that the arrangement with the county is that if there is a successful bidder, that bidder will be responsible for removing the building, insurance, and returning the land to a suitable condition. If there is no bid, the house will be demolished by county as originally planned.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that it is the desire of the council to have the houses be conveyed to the town for sale by the town. The motion passed unanimously.

XIII TOWN ATTORNEY'S ITEMS

A EX PARTE COMMUNICATIONS

Mr. Roosa went over the requirement for the quasi judicial hearing that is to be held tomorrow. The decision must be based on the application of facts presented at the hearing to the existing ordinances. In addition, the resolution protects them from ex parte communications only works if they are disclosed at the meeting. There are two different types of ex parte. One is a matter of opinion, such as when a neighbor says I don't want that because it would reduce the land value. That is their opinion and is not relevant before or during the hearing. What can be considered are facts, such as if someone testifies that they used to live next to a grocery store and it was noisy and they picked up the dumpsters at 4 in the morning. If an engineer or planner gives testimony, that is OK to be considered because they are considered experts. Identify conversations with people, and if there is factual representation, that should be disclosed. Ask yourself if it was an opinion or if it was some objective experience that would be factual. If those same facts are not presented at the hearing, you cannot consider them, because at the hearing they are under oath and can be questioned and challenged.

B HIRING OUTSIDE COUNSEL FOR DRA/CRA

Mr. Roosa handed out a paper about the potential CRA. In the packet is give information about David Cardwell of the law office of Holland & Knight. It summarizes the services that he would

perform and how he would be compensated. His fees are \$175 per hour with a maximum of \$5000 plus costs including travel, long distance, copying, and delivery. Mr. Roosa recommended that the town hire this outside help because it is very specialized and there is a potential for substantial revenues. Mrs. Segal-George said this man is the best in state, and we have some unique issues because of the county and their home rule. We need to certify millage by the end of June. We have not received the draft of the letter yet, but she requested permission to circulate the letter to the council members before the next meeting, and if they have any objections to the letter, they can let her know. It was clarified that this expenditure will be reimbursed once the CRA is formed, but initially it will come from general funds. Mr. Reynolds asked if we have approved forming a CRA, and Mrs. Segal-George said that we have approved hiring a consultant. We need to freeze the millage by June 30 in order to create the TIF. Mr. Reynolds asked why we are forming a CRA. Mr. Roosa said that an area is designated and incremental increases in taxes are used only in that area. It is a way of funding additional improvements in an area and paid for by the people who benefit from those improvements. We are talking about the core area this time instead of the whole island. It is a commercial area and unique and some capital projects are needed and they would be funded by the property owners in that area.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that Mr. Cardwell be retained, stipulating that all costs are to be recovered by the CRA. The motion passed unanimously.

Mr. Roosa said that Mr. Hoffman has filed for relief under the Florida Relief Act for the movie theater. He asked for authority to represent the town in defending that under the special master process.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that Mr. Roosa be authorized to represent the town. **Discussion:** Mr. Roosa said this process is for conciliation and negotiation. If it can't be resolved between the parties, the special master makes a decision based on the current plan and the facts presented, which then comes back to the town council. Previously special masters have ruled that we did not have the facts to support our position. His decision is not binding. **Action:** The motion passed unanimously.

XIV PUBLIC COMMENT

A TOM MYERS

Mr. Myers said he is the self-appointed caretaker for the Matanzas Preserve. They have tried to do cleanups on a weekly basis, then monthly, and now they are trying to do it quarterly. There are 57 acres and everyone owns a part of it. He asked for help from anyone who is willing.

B SANDI SUTER

Ms. Suter said she is conveying the feelings of the residents on Palermo. A parking lot suddenly appeared and immediately had a negative impact. She checked with the town and with Mr. Crabtree and was told that it was legal because Mrs. Segal-George had signed the permit. She went to Mr. FitzSimons and Mr. Reynolds who were helpful, but it still took weeks to get the parking lot removed. The damage was hard to imagine. There were overcrowded corners jammed with vehicles even along Palermo, signs on Estero, litter, and vehicles trying to get in and out making it impossible to get to their homes and for emergency vehicles to get through. One night she came upon two men fighting with pipes and bottles and she was so upset with this situation that she left two messages on the mayor's voice mail. The mayor then transferred the message to everyone else. Then she heard that Palermo was going to be rezoned commercial. Technically that was not true, but there is a strong move to make it commercial. She attended the LPA meeting and held off that move. After the Call to Action flyer, the residents received a two-page letter that spoke about the comp plan but did not mention the move to rezone Santos to commercial. Mrs. Segal-George said there were personal attacks, but she recalls no attacks that night. She believes putting illegal parking lots in was against the ordinance that prohibits putting commercial activity into residential neighborhoods. She wants to know why it took weeks to get it removed. They deserve to have their rights protected.

C BILL VAN DUZER

Mr. Van Duzer said he wanted to offer his support to the council and staff. Although he doesn't always agree with what is done, he completely agrees with the way things are handled and business is conducted. The recent actions of unnamed accusers are deplorable. Everyone is entitled to their opinion, and everyone is allowed to voice it, but the way it was done recently was terrible. He hopes it won't

continue in the future. There will always will be someone nipping at your heels, but he wanted to let them know that the majority are solidly behind what they do and how they do it.

XV ADJOURNMENT

The meeting adjourned at 8:53 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary