

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JANUARY 21, 1997**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Tuesday, January 21, 1997, at 6:30 P.M. by Anita T. Cereceda, Mayor. Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa. Excused from the meeting: Vice-Mayor and Council Member Ted FitzSimons

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by the Reverend Dr. Ronald P. Salfen, Pastor of Chapel By The Sea Presbyterian Church.

IV PROCLAMATION ON CANCERTHON

Ray Murphy read a proclamation thanking Continental Cablevision and the American Cancer Society for their many years of work on the Cancerthon which will be held for the last time on January 25. Edward Garcia, Community Relations manager of Continental Cablevision, accepted the proclamation.

V PUBLIC COMMENTS AND INQUIRIES

There were no public comments.

VI APPROVAL OF MINUTES: JANUARY 6, 1997

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

VII REVIEW OF EXPENDITURES

Mr. Reynolds questioned the expense for flowers for an LPA member in the hospital. He suggested the Council set a policy at a later meeting.

VIII COUNCIL MEMBERS' ITEMS AND REPORTS

A RUSTY ISLER

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

B RAY MURPHY

Mr. Murphy mentioned that there needs to be a workshop on finances that will cover the final results of the loan with First Union, operating account balances, current bank balances, and a proposed budget ordinance amendment (due to unexpected revenue including the grant money for the Long property), etc. The workshop was tentatively scheduled for the second workshop in February.

C GARR REYNOLDS

Mr. Reynolds said that he would like a future workshop on policies regarding conduct of members during meetings, the role of the chair, and the setting of the agenda. Mr. Reynolds read seven items and asked that these become policy temporarily until a workshop can be held. Marsha Segal-George said that she only had a problem with changing the agenda once it is posted in order to be fair to all the public who have checked the agenda ahead of time. Mr. Isler agreed with all comments except the agenda which is a staff function and the council should rely on them. Mr. Roosa said that the agenda identifies items which the council should be prepared to vote upon. If you add something too late, council members don't have a chance to prepare.

Regarding the cancellation of the council workshop on January 16, Mr. Reynolds felt that the Council members should have been consulted first since he had an item that he would like to have discussed at the workshop.

He stated that he thinks it is OK for the Council members to discuss any items that is in the public news. He mentioned that the Shrimp Parade will be on February 22 at 10 AM. The bridge will be closed at 9 AM.

At Traffic Committee they discussed crosswalks and safety. There will be new signs going up at the crosswalks and the crosswalk stripes on the road will be repainted so that they are more visible. Also no passing lines will be painted near the crosswalks.

D ANITA CERECEDA

Mayor Cereceda stated that she has been brushing up on Roberts Rules of Order and will be making the change that each Council member's vote will be polled separately on ordinances. She would also like to see a workshop on policies. The Council also needs to appoint a charter review committee. She proposed that each Council member nominate a person to sit on the board, but if the Council prefers, they could nominate a slate and the top five vote-getters will be on the committee. The committee will hold open meetings per the sunshine law. The Chamber has already conducted a review and the council's review committee will make use of their review.

She also said that there has been a meeting with the Sheriff who is short \$50,000 for covering the Town for Spring Break and he would like the Town to allocate the money. She said that she went back to the minutes of an earlier meeting where she specifically asked the Sheriff about core services and was assured that we would receive the same services as in the past. The Council agreed that the Sheriff could be counted on to do the right thing for the Town.

IX PUBLIC HEARING ON AMENDMENT TO VESSEL CONTROL AND WATER SAFETY ORDINANCE

Mayor Cereceda read the titles and opened the public hearing.

A BILL VAN DUZER

Mr. Van Duzer, a resident since 1956, has owned a boat since 1959. He has visited all areas of the back bay while fishing and believes it should be protected, but he takes exception to the 1000' slow speed zone because it will take 1 to 1 ½ hours from his canal to his favorite fishing hole. He does not feel that he endangers the grass flats or the animal life.

B LUCINDA KELLER

Ms. Keller is concerned about enforcement: who will enforce and how will it be paid for? Marsha Segal-George said she will be meeting with law enforcement bodies to discuss this.

C JIM FIGUERADO

Mr. Figuerado, owner of Mid Island Marina, is opposed to the amendment because he has just fixed up his marina and it would hit him financially because no one will want to store their boat there if it will take them three hours to get to the Gulf. Mr. Isler pointed out that the channels have been excluded from this ordinance.

D JOHANNA CAMPBELL

Ms. Campbell spoke for the animals. 1000' feet is not that far because the channel is excluded and she knows that not all fishermen are as considerate as the previous speakers. Rookeries have been destroyed and manatees injured by excessive speed.

E RAY MERTENS

Mr. Mertens questioned whether we are over legislating and possibly overstepping the boundaries for San Carlos Island and other jurisdictions. 500', if it is enforced properly and fined seriously, will be good enough. If we try enforcement first and that still doesn't work, the Council can go back later and increase it to 1000'. He would rather see enforcement than change.

The public meeting was closed.

Mr. Reynolds suggested dropping any reference to "beach" since the ordinance addresses the back bay. He also suggested it should say "not less than 100 feet of the pier." Mayor Cereceda said she would like to see the effective date be changed to a time when it can be enforced. She also suggested leaving the zone at 500' but adding a 500' zone around any beach which would protect all the rookeries and leave the rest of it open. Marsha Segal-George feared that would be even harder to enforce.

Motion: Mr. Isler moved and Mayor Cereceda seconded that the amendment ordinance be dropped. After discussion, the vote was as follows: Mr. Isler - yes; Mr. Reynolds - no; Mr. Murphy - yes, Mayor Cereceda - yes. The motion passed.

Discussion: Mr. Reynolds would rather have it continued until the next meeting rather than dropped.

The Council took a break at 8:00 PM and reconvened at 8: 15 PM.

IX PUBLIC HEARING ON PARASAILING ORDINANCE

Mayor Cereceda read the titles and opened the public hearing.

A AL VAN HORN

Mr. Van Horn urged support because the beach needs reasonable measures of control.

B DEAN KIRKESTNER

Mr. Kirkestner, of Rebel Watersports, expressed concern about the requirement for Florida stickers because he is federally registered and is not required to have them. He felt that the rule about 500' from the pier was unnecessary and that people want to take pictures of the pier. He is having a problem with private boats anchoring within the buoy lanes for jet skis. If the ordinance can't be enforced, don't pass it.

C BILL PERRY

Mr. Perry, of Aquasports Unlimited, said that perhaps parasail operators should only be able to operate out of the PAL sites (only 6 locations on the island) rather than out of PWVL locations.

D RON JOHNSON

Mr. Johnson said that there are 21 PWVLs, and therefore this ordinance would allow 21 locations for parasail. That number needs to be restricted for safety. He said it is unfair that he has to operate 1000' out even though he has a master's license, when an individual can run his boat within 500'.

E TED PRIMICH

Mr. Primich of Wind and Water Sports at Lani Kai said that locations without parasail licenses don't have to pay such high insurance and they don't have to buy the expensive boats that are necessary for parasailing, yet the PWVL operators are gaining from parasail vendors without paying for it. He has heard that Miami has a new law that you can't get a license unless you have 100 hotel rooms.

F RICK SMITH

Mr. Smith of Paradise Parasail said that the idle speed zone is to protect swimmers and therefore 1000' is unnecessary. There has never been a problem between swimmers and parasail boats, and all drivers have captain's licenses. He thinks that a rule not to fly over the pier would be sufficient.

G LONNIE CLARK

Mr. Clark of Sun and Fun Air and Water Sports, mentioned that sometimes it is necessary to have transactions on the boat because someone changes their mind or the weather changes. Where money changes hands is not a safety issue and shouldn't be in this ordinance. He also said they should be able to lease vessels, in case of a vessel failure during busy season. If they can't lease a good replacement, someone might be tempted to run a vehicle that is not in top condition. He suggested that the word "rental" should probably read "charter" instead. He feels that the rule that a PAL cannot be within 500' of a PWVL is not fair.

H PATRICK RANALLI

Mr. Ranalli of Ranalli Parasail questioned whether they could pick up at PWVL locations also. He is satisfied with the ordinance as it reads.

The public hearing was closed.

Marsha Segal-George stated that this ordinance has been worked on since the summer, has had a lot of input from the vendors, and has passed the LPA. There are 6 PAL licenses and one grandfathered license (Pat Ranalli) and they are the only ones who could pick up at any location. She has a meeting with the marine patrol and the sheriff and code enforcement this week to discuss enforcement. It was noted that on page 6, it should read "operate" instead of "operated", and on page 7 at the top, "C" should be removed.

Motion: Mr. Reynolds moved and Mr. Isler seconded that the ordinance be adopted. After discussion the vote was as follows: Mr. Reynolds - yes; Mr. Murphy - yes; Mayor Cereceda - yes; Mr. Isler - yes. The motion passed unanimously.

Discussion: Mr. Murphy asked why the parasailers are required to go out 1000'. Bill Van Duzer, a member of the LPA, was asked to speak as an expert witness, and recalled that the LPA wanted them out because in certain wind conditions, the parasail would be within 500 feet of the shore if they inflated the chute at 500'. In addition it would hopefully get them further out from the waverunners. Mr. Isler felt that these were technicalities that could be worked out if they became major problems. You will never have a perfect document, and no one has said that the ordinance as written will put them out of business or would be unsafe to them or the public.

XI PUBLIC HEARING ON HAZARDOUS MATERIAL INCIDENT COST RECOVERY ORDINANCE

Mayor Cereceda read the titles and opened the public hearing. There being no public comment, the hearing was closed.

Motion: Mr. Reynolds moved and Mr. Murphy seconded that the ordinance be passed as written. The vote was as follows: Mr. Murphy - yes; Mr. Isler - yes; Mr. Reynolds - yes; Mayor Cereceda - yes. The motion passed unanimously.

XII RESOLUTION ON NATIONS BANK LOAN

Mr. Roosa said that this resolution authorizes the issuance of a \$500,000 loan at 4 ½ % adjustable interest.

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

Discussion: Mr. Reynolds said that he does not see why the Town needs to keep getting loans for money they don't need.

XIII RE-APPOINTMENT OF LPA MEMBERS

Marsha Segal-George said that according to the ordinance, there are two LPA members with one-year terms (Mr. Van Duzer and Mr. Mulholland.) At the time, the Council stated that they wanted them to stay on until the task was finished, so they need to be reappointed.

Motion: Mayor Cereceda moved and Mr. Reynolds seconded that Mr. Van Duzer and Mr. Mulholland be reappointed to the LPA. The motion passed unanimously.

XIV AGREEMENT WITH LEE TRAN ON TROLLEYS

Mayor Cereceda asked what happened to the free trolley and Mr. Gucciardo answered that the staff was relying on the recommendation of Lee Tran that there would be a potential for abuse, mostly with kids jumping on and off. Lee Tran says that the ridership is not affected that much by the 25-cent fare. Mayor Cereceda feels that the trolley should be free as an incentive to solve the traffic problems. She also asked if the fare box is greater than 20%, would the Town get a refund? Mr. Gucciardo answered that we would not. He also explained that this is a short-term approach for this season only.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the agreement be accepted. After discussion the motion passed unanimously.

Discussion: Mr. Isler stated that this is 10% of our transportation budget which should be used for roads. He is afraid that it will set a precedent and we will have to pay for it every year. He is disappointed that all responsibility for peaking is falling on the town, and the County is not even giving us the gas tax we are due. Yet he realizes that we have a problem and if we don't do it this year, no one will. Marsha Segal-George stated that TDC's consultant says that our traffic problems are caused by seasonal residents rather than tourists and therefore TDC can't pay for it. The Town does not have the studies to prove that it is not true. Mayor Cereceda asked if they could take out the part about advertising monies going to the County. Mr. Gucciardo felt that it was too late to change this year but it could be worked on for next year.

XV REQUEST FOR MONEY FOR INTERPRETIVE SIGNAGE ON MOUND KEY

Larry Fooks, park manager of Mound Key State Archaeological Site, stated that Mound Key is only 2200 yards from Fort Myers Beach. He showed copies of interpretative panels that they would like to place along the trail so that visitors can understand the site better. They will cost about \$2000 and he needs the support of the Council in the amount of \$700. This project will be in partnership with the Boy Scouts, the Koreshan Unity Alliance, the DEP, and hopefully private enterprises. Marsha Segal-George noted that Mound Key is going to be an important part of the Eco-Archeo Trail to tie in with the Mound House. The money would come out of the Community Services budget.

Motion: Mayor Cereceda moved and Mr. Reynolds seconded that the donation be approved. The motion passed unanimously.

XVI TOWN MANAGER'S ITEMS AND REPORTS

A FUTURE WORKSHOPS

John Gucciardo said that a CRA workshop has been scheduled on January 29 (Wednesday) to coordinate with CRA, construction and other entities to make a plan for turnover to the Town (some time in February.) February 13 (morning) has been set as a workshop with Sanibel on beach issues, and will take the place of the regular evening meeting on that date. He proposed February 27 as the workshop on budget and finance and the result of the audit. Mayor Cereceda suggested that at each workshop there should be time set aside for policies and procedures in addition to a special workshop. Mr. Isler suggested a workshop on March 27 to go over the computer (Word, Excel, Office 97, etc.), e-mail, internet, etc. Mr. Roosa mentioned that Steve Carter of the News Press had offered to give a workshop on government in sunshine, ideally in conjunction with the LPA and the Charter Review Committee. That will be set for March 13 along with policies and procedures. Mayor Cereceda suggested that at the next meeting on February 3 the council be prepared to name people to the Charter Review Committee. It was decided that each Council member would be able to appoint one member.

XVII TOWN ATTORNEY'S ITEMS

Mr. Roosa reported that the attorney for Sunstream has asked for some comfort on the expiration of their permits while they are in negotiations with Mariner on the possible land swap. Sunstream submitted a proposed motion. If the Council wants to consider adopting the motion, Mr. Roosa suggested changing the last two lines to "90 days after the notice to proceed from the Town Council". That would give the Council more control over how long the negotiations could proceed. As of now, their permits will expire 90 days after the mandate from the Second District Court of Appeal has been handed down, which could be any day because the opinion has already been handed down and there has been no appeal filed. Mr. Roosa noted that this is the first time that the Council has anything in writing on the proposed swap. Mr. Reynolds suggested since this is the first time that the Council has seen this, that it be tabled until the next meeting because he would like more time to think about it. Mayor Cereceda moved and Mr. Reynolds seconded that this request be denied, but Mr. Roosa said that a motion is not necessary if they are not going to act on it. Mayor Cereceda stated that she was afraid this would give Sunstream all the time they want to drag their feet. She thought that refusing this would make them move faster to come up with a proposal and then the Council can consider the request once they get a proposal. Marsha Segal-George stated that her fear was that if the Council did not give Sunstream some assurances, they would have to start driving pilings for the hotel before the possibility of a land swap was fully explored. She said the land use process is so lengthy that it could take a year for completion of all the steps. Mr. Gucciardo said everyone understands the need to get the thing defined so the residents and Council can make an evaluation, but Sunstream's concern is that unless they have some protection of their permits they could get caught in the County's public hearing process and it might not even get to the LPA before the 90 days has expired. If the Council adopts Mr. Roosa's suggested change, the Council can pull the plug on the negotiations and start the 90-day clock at any time. Mr. Reynolds expressed concern that the staff was using a hard-sell approach and was more concerned with the comfort zone of the people they were meeting with than the comfort zone of the Council. Mr. Gucciardo responded that he was merely trying to relay what Sunstream had relayed to him, not his opinion on it, so that the Council could make an informed decision. Mayor Cereceda confirmed that was how she interpreted it, but Mr. Reynolds said that was not how he interpreted it. Mr. Murphy and Mr. Isler suggested waiting until another meeting to think about it. It will be put on the agenda for February 3.

Mr. Roosa noted that the judge has passed down the opinion on Mid Island Marina that there was not substantial reason for the Council to have turned down their request. Therefore it will come back to the Council. He presented a paper with legal opinions for the Council to consider.

XVIII PUBLIC COMMENT AND INQUIRY

A JOHANNA CAMPBELL

Ms. Campbell spoke about the trolley, and said that the recent News Press article proved that when the 25-cent fare was enacted, ridership was cut in half. She thinks that getting more trolleys is a good use for transportation money. She also believes that advertising money on the trolleys is a wash financially.

B RAY MERTENS

Mr. Mertens thinks there should be a workshop on proper treatment of employees and handling problems. He felt uncomfortable sitting in a public forum hearing employees be put down and their integrity questioned. He thinks you should treat them right or fire them.

Mr. Reynolds stated that he thought the comment was directed toward him, and he didn't feel he was treating the employees unethically but he questioned whether the staff was simply giving the Council information or

was using a selling-type approach. He thought perhaps they were forgetting the Council's comfort zone and missed some forethought and that they should consider the Council members a little more. He stated that he wasn't questioning the staff's integrity and that no apology was necessary.

IX ADJOURNMENT

Motion: Mr. Murphy moved and Mr. Isler seconded that the meeting be adjourned. The motion passed unanimously. The meeting was adjourned at 10:05 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary