

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
FEBRUARY 17, 1997**  
Nations Bank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I CALL TO ORDER**

The meeting was opened on Monday, February 17, at 6:34 P.M. by Anita T. Cereceda, Mayor.  
Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted FitzSimons, Vice Mayor and Council Member; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and 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 Raymond Kress, pastor of St. Raphael's Episcopal Church.

**IV PUBLIC COMMENTS**

**A SHARON FAIRCLOTH**

Mrs. Faircloth, owner of Holiday Water Sports, spoke about increased enforcement. She felt that the peak time of enforcement should be February through August, including every day during Spring Break, and perhaps only on weekends during the summer. She felt that the PWVL operators shouldn't have to pay half of the enforcement cost, because the Town has just passed an ordinance limiting waverunners to 8 per location which will make for better self-regulation. They also shouldn't have to pay for back bay enforcement because their rentals aren't allowed to go in the back bay except on guided tours. She feels that personally-owned waverunners are the problem, not the renters. The vendors are willing to pay some, but not half. In addition, the vendors should not have to pay if someone gets a ticket while renting one of their watercraft.

**B CARROLL CALDWELL**

Mr. Caldwell lives in the Bay Beach area and sees watercraft of all kind go by. Owners of all watercraft have as much duty to respect the bay as renters do. During high tide he has seen boats go at a fast speed next to the shore of Coon Island and other sensitive islands. All craft should be required to stay a specified distance from the islands.

**C MIKE KRATT**

Mr. Kratt wished to speak on Diamondhead but the mayor told him he would have to wait until the later public comment since Diamondhead is not on the agenda.

**D SCOTT DARGITZ**

Mr. Dargitz is an employee of Rebel Watersports, and feels that the PWVL vendors shouldn't bear 50% of cost of enforcement because 90% of the violations are from privately-owned watercraft. If the sheriff is out four days a week, and writes tickets instead of warnings, there should be ample violations to make enough revenue to pay for themselves. If it comes to the end of the year and they haven't written that many tickets, maybe the vendors could make up the difference.

**E JIM FIGUERADO**

Mr. Figuerado of Mid Island Marina, feels he has done everything he can to run a first-class operation. The county staff recommended approval, and after the Council's denial, it went to a special master which the Town picked. They modified their application and reduced the size of their restaurant application. Mr. Roosa, Marsha Segal-George, the county staff and the special master all recommended approval. At the July 15 meeting, two Council members voted for approval and three voted against, so it went to a judge and the judge ruled for them. The judge said that the request was in compliance with the law and that there was no basis for the Council to deny the permit. Mr. Figuerado feels that they have proved without a shadow of a doubt that they have the right for the permit. He asked the Council to please issue their special permit.

**F DEAN KERKESNER**

Mr. Kerkesner, owner of Rebel Watersports, said that the vendors want to police themselves, are happy that they all have insurance now, and for the most part are happy that the boats are limited to 8 at each location. Their complaint is that the law is good but if they have to pay for enforcing it, the business is not lucrative

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**F        DEAN KERKESNER**

Mr. Kerkesner, owner of Rebel Watersports, said that the vendors want to police themselves, are happy that they all have insurance now, and for the most part are happy that the boats are limited to 8 at each location. Their complaint is that the law is good but if they have to pay for enforcing it, the business is not lucrative anymore. It is the private owners that violate the rules. The vendors pull their renters from the water if they do not obey the laws. The marine patrol should enforce the law and not just give warnings.

**G        BOB GAYDOS**

Mr. Gaydos cautioned the Council about spending money on item 12. The boat race sponsored by Hooters should not be paid by the taxpayers. The parents of high schoolers can pay for their own graduation party. The art association can sell more paintings if they need more money.

**H        RAY MERTENS**

Mr. Mertens said that the Council's action tonight will have a serious impact on his livelihood. The Town adopted Lee County zoning and hired county staff to do permitting for the Town. The county staff recommended the permit be issued, but the council turned it down. The Special Master recommended it, but the council turned it down again. The judge has now clearly ruled that the Council was wrong and should have issued the permit. He is not asking for a favor. He is demanding that the Council follow the law. Do not waste the taxpayer's money to continue the battle.

**V        APPROVAL OF MINUTES: JANUARY 29, 1997 AND FEBRUARY 3, 1997**

**Motion:** Mr. FitzSimons moved and Mr. Murphy seconded that the minutes of January 29 and February 3 be approved as submitted. The motion passed unanimously.

**VI       REPORT OF EXPENDITURES**

The Council had no questions or comments concerning the report of expenditures.

**VII      COUNCIL MEMBERS' ITEMS AND REPORTS**

**A        GARR REYNOLDS**

Mr. Reynolds gave the Council a copy of a letter he received explaining why there is no public parking at Bowditch Point. He reported that he has received several letters overwhelmingly against giving away Bowditch.

He reported that at the last Traffic Committee meeting they discussed the latest pedestrian crosswalk injury. John Davis is working on the problem and has been asked to speed up the work.

He also mentioned that he received a letter regarding the drainage problem on Palmetto. His volunteer road group is going to look at it again and see if there is a solution.

**B        TED FITZSIMONS**

**Motion:** Mr. FitzSimons moved that Council adopt a policy that the conversion of public parks, easements and open spaces to other land uses, within the boundaries of the Town of Fort Myers Beach, will only be allowed when there is a clear demonstration of benefit to the public and that the Council encourage all efforts by private and public interests, including the Town Council and staff, to pursue the equitable resolution of land use issues but without the privatizing of public lands wherever possible. The motion was seconded by Mayor Cereceda for discussion. After discussion, the vote was as follows: Mr. Isler, no; Mr. FitzSimons, yes; Mayor Cereceda, no; Mr. Reynolds, yes; Mr. Murphy, no. The motion failed.

**Discussion:** Mr. FitzSimons said he proposed the motion in an effort to try to clear the air on the Bowditch land swap problem, but felt it would be useful in other cases as well. Some people say that public lands should never be converted to private use, but this would say that sometimes it might be OK, but it must be for benefit of the Town. Mr. Isler had reservations because he did not think it was clear and because he feels that the law already requires that they do things that benefit the public. Marsha Segal-George said that the county can't sell public lands, but they can swap them but they must prove that there is equal value in some way between the two pieces. The County does not have to prove benefit to the public. Mayor Cereceda said she felt that this was in reaction to newspaper articles and rumors, and that the Town residents have no reason to distrust this Council not to do what is in the best interest of the Town. (They can distrust the County, but they have no right to distrust the Town Council.) She feels that there is nothing on the table and the Council does not need to make any decisions now. Mr. Murphy felt that the Council needs to be part of the debate and shouldn't quash the discussions.

Mr. FitzSimons recommended that \$500,000 be put in the next budget for purpose of acquisition of public lands.

**C RAYMURPHY**

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

**D RUSTY ISLER**

**Motion:** Mr. Isler moved that a letter be sent to the County Commissioners asking them to install low impact parking at Bowditch Point. Mr. Reynolds seconded the motion. After discussion the vote was as follows: Mr. Isler, yes; Mr. FitzSimons, yes; Mayor Cereceda, no; Mr. Reynolds, yes; Mr. Murphy, no. The motion passed.

**Discussion:** Mayor Cereceda said she did not object except that the timing is bad since the County is in negotiations now. They haven't put in parking in nine years so why would they now. Mr. Isler said the Town has never made the request before. Mr. Murphy said that he was afraid that it would send the message that the Town Council does not want the County to continue negotiations.

**E ANITA CERECEDA**

Mayor Cereceda had no items to bring before the Council.

#### **VIII DRAFT DISCUSSION OF CONTRACTORS LICENSE ORDINANCE**

Mr. Roosa explained that this ordinance would mirror the county, so if there is a problem, it will go to the county board, and the Town will **C RAYMURPHY**

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

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#### **VIII DRAFT DISCUSSION OF CONTRACTORS LICENSE ORDINANCE**

Mr. Roosa explained that this ordinance would mirror the county, so if there is a problem, it will go to the county board, and the Town will not have to enforce or duplicate anything the county is doing. It will require that all contractors have a County license. The ordinance was set for first reading on March 3.

#### **XI RESOLUTION ON PUBLIC PARTICIPATION**

Marsha Segal-George stated that this is required in the comp planning process and that these procedures have been passed by the LPA.

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

**X RESOLUTION CORRECTING THE LEGAL DESCRIPTION OF RESOLUTION 96-37  
(CLOSING TIMES SQUARE TO VEHICULAR TRAFFIC)**

Mr. Roosa said when the original resolution was passed, they did not have a good drawing of the area. It turns out when looking in the plats, they closed off part of the road that shouldn't have been. This resolution will move the line back to the bollards.

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

**XI OLD BUSINESS**

**A SHERIFF'S ENFORCEMENT OF JET SKI ORDINANCE**

Marsha Segal-George said that she has talked with Chuck Listowski, and found out that the WCIND already gives money to the Sheriff's Department for marine enforcement, and we are entitled to a portion of those dollars. He believes there is sufficient money that was given to the county this year to pay for our enforcement. He will also assist us in the next budget cycle. If we want to start enforcement March 1, she is not sure the Town can recoup all the money from WCIND. If the Council doesn't want to enforce it until we are sure we have the money on hand, they can wait. If we start enforcing on March 1, the money would have to come out of reserves. The Council agreed to delay until it was determined about the WCIND money since the Sheriff won't have incentive to pay for it if we already do. Mr. Isler pointed out that our ordinance did not change that much, so they can't charge us as an extra service. It just wasn't being enforced before.

**B FIGUERADO CASE (MID ISLAND MARINA)**

Mr. Roosa said he could not disagree with anything the two speakers said. But it is his duty as attorney to let the Council know if there are any other choices. He handed out a paper explaining the case of St. Petersburg vs. Schweitzer. He explained that the circuit court of appeals sat as an appellate court and there is no appeal when reviewing an appellate court. Therefore the only issue unresolved is whether the original ordinance is defective and that it would cause a gross injustice or irreparable harm to enforce the court order. It would not be easy but the good thing is that the appeal would go back to the same court that made the St. Petersburg ruling. If the Council is going to appeal, it must be filed this week. Mr. Isler felt strongly that this was not a water-Marsha Segal-George said that she has talked with Chuck Listowski, and found out that the WCIND already gives money to the Sheriff's Department for marine enforcement, and we are entitled to a portion of those dollars. He believes there is sufficient money that was given to the county this year to pay for our enforcement. He will also assist us in the next budget cycle. If we want to start enforcement March 1, she is not sure the Town can recoup all the money from WCIND. If the Council doesn't want to enforce it until we are sure we have the money on hand, they can wait. If we start enforcing on March 1, the money would have to come out of reserves. The Council agreed to delay until it was determined about the WCIND money since the Sheriff won't have incentive to pay for it if we already do. Mr. Isler pointed out that our ordinance did not change that much, so they can't charge us as an extra service. It just wasn't being enforced before.

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The Council took a break at 8:30 PM. and reconvened at 8:45 PM.

## **XII NEW BUSINESS**

### **A REQUEST FOR FUNDS FOR HOOTER'S OFFSHORE GRAND PRIX**

Bob Beasley, President of FMB Offshore Grand Prix, stated that his group is made up of all volunteers and all proceeds go to charity (Shriner's burn centers). They have raised \$30,000 in three years of racing. It brings a lot of recognition to the Town and was showed last year on ESPN fourteen times. They would like to ask for \$3000, which would pay ¼ of their insurance policy for the event. The event costs more than \$150,000 to put on. Mr. Beasley was asked if there was any way the Town could help besides a donation of money. He said that it costs \$2-3000 for extra sheriffs, about \$1000 for fire department. It was suggested that the Town contact the sheriff's department and fire department to encourage their help with the event.

### **B REQUEST FOR FUNDS FOR PROJECT GRADUATION GALA**

**Motion:** Mr. FitzSimons moved and Mayor Cereceda seconded that the Town match last year's donation of \$250.00. The motion passed unanimously.

### **C REQUEST FOR FUNDS FOR ART ASSOCIATION SCHOLARSHIP**

The Council decided to discuss the policy for use of this money at their next workshop.

### **D DISCUSSION OF LPA BUDGET**

Mr. Mulholland, chairman of the LPA, stated that the LPA was created one year ago and the nine members have responded well and made excellent progress. They are on schedule to complete the comp plan. They meet about once a week. They are spending a lot of the Town's money, but they are also saving the Town money by doing some of the projects themselves using volunteers instead of having the planning consultant do it all. The LPA is asking to go into next year's budget because they are using up this year's budget too fast because they are meeting so often and because they need a couple more consultants. They will have to stop meeting if they don't get the money early.

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Mr. Reynolds asked for clarification on whether the actual cost will be increased. It will not be increased except for the money for the transportation element which was not included in the original contract. Bill Spikowski said that he is negotiating now with some local firms for the traffic element, but none of them are experts in traffic calming which is why they are bringing in Walter Kulash for two days. Marsha Segal-George pointed out, however, that another workshop will be held in March and will depend on how the public reacts and what they want, whether it will cost more money. Mr. Spikowski said that they expect to complete the plan about December 1, 1997 if the change in budget is approved. The LPA will hold public hearings, then the Council will hold public hearings, then the Council may choose to send some parts back for major revisions which would not be included in the contract and would cost more. Then it goes to the State for four months then back to the Council for final approval. There will almost surely be changes required by the State.

**Motion:** Mayor Cereceda moved and Mr. FitzSimons seconded that \$42,500 be moved forward to this year's budget of the planning consultant's contract, that \$4400 be allocated for Victor Dover and Walter Kulash to do a workshop on traffic calming, and that \$35,000 - 45,000 be approved for the traffic element. The motion passed unanimously.

**Discussion:** Marsha Segal-George clarified that the money would be coming from contingency which has not been touched up to this point, and that there will be a budget amendment accounting for about \$350,000 which the Town was not expecting at the time the budget was passed.

### **XIII TOWN MANAGER'S ITEMS AND REPORTS**

Marsha Segal-George asked the Council's direction regarding acquisition of buffer lands (that came out of the joint meeting with Sanibel). She was directed to work on a resolution.

Mr. Gucciardo reported that FPL tells him that within two weeks they can start removing poles, it will take 2-3 weeks, and they envision major traffic problems because of the large machinery involved. If it looks like it will be that way, he recommended holding off until after season. He will write the CRA and the Commissioners and request that action if necessary. (They should be able to put in new lighting and activate them; the problem is only with the old poles.) The Council asked if the work could be done at night and Mr. Gucciardo said he will pursue that option.

### **XIV TOWN ATTORNEY'S ITEMS**

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

### **XV PUBLIC COMMENTS**

#### **A DAN PARKER**

Mr. Parker addressed the problem of dogs on the beach leaving dung. He also mentioned that some live-aboard boaters dump raw sewage directly into the back bay. (Some of the boats have no motors and cannot get to the marinas to dump sewage and should not be considered boats.) In addition there has been the problem of the FMB sewage treatment plant overflows and the runoff from farms. He suggested that the Town appoint a bay and beach constable to see that these violations are stopped.

#### **B MIKE KRATT**

Mr. Kratt thanked the Council for not donating funds to the boat race. Regarding jet skis he felt that was another good decision. The Sheriff, Marine Patrol and Coast Guard should all be looking for these offenders without asking for more money to do their job. Regarding Bowditch, people are still having meetings, and the Council is not cooperating with each other and sharing information that they have with each other. He asked each Council member that if they have any meetings that they will share all knowledge that they learned when they weren't with other Council members.

#### **C MARTIN KUHL**

Mr. Kuhl, a resident of the beach for 15 years and a homeowner on Connecticut Ave. for 6 years, spoke about the Long property. He is concerned that the land will be going off the tax rolls and he doesn't want to see it turned into a historical society site or a wedding place. There are also many trespassers. Mayor Cereceda suggested that he speak with Marsha Segal-George to get the current information. Since we do not own the property, we cannot do anything about the people trespassing.

### **XVI ADJOURNMENT**

**Motion:** Mr. Murphy moved that the meeting be adjourned. The meeting was adjourned at 9:58 PM. Respectfully submitted,

Peggy Salfen  
Recording Secretary