

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

**I CALL TO ORDER**

The meeting was opened on Monday, March 17, 1997, at 3:00 P.M. by Anita 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 the Reverend Raymond Kress of St. Raphael's Episcopal.

**IV PUBLIC COMMENT ON THE AGENDA**

There was no public comment.

**V APPROVAL OF MINUTES**

**A FEBRUARY 13**

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

**B FEBRUARY 27**

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

**C MARCH 3, 1997**

**Motion:** Mr. Murphy moved and Mr. Reynolds seconded that the minutes be approved. After discussion, the motion passed unanimously.

**Discussion:** Mr. Reynolds said that on page 1, item IV (B), it should be clarified that Mr. Fictor volunteered to patrol on an ATV. He also mentioned that on Page 2, item X(A), after the last sentence, he would like to have it in the written minutes that he agreed with the course that Councilman Isler suggested even though no vote was taken. He also said that on page 3, item X (C) at the end regarding crosswalks, he intended to say that the Town needs more media publicity regarding crosswalks and drivers.

**VI REVIEW OF FINANCIAL REPORTS FOR THE MONTH OF FEBRUARY**

There were no comments on the financial reports.

**VII PRESENTATION BY WAYNE DALTRY (SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL) ON REGIONAL HARBOR PLAN**

Mr. Daltry spoke about the problem of boater regulation under so many different jurisdictions. There are about 80,000 boats now in our region and that number could double. They have established a regional harbor board as a non-regulatory alternative to asking the state to establish a statewide boating regulation on anchorage. He is speaking to all the local governments to promote the program which will help with mediation, education and technical assistance rather than adding more policing and regulation. Boaters would then know that the same rules apply all along the coast. They are asking that the Town Manager and Town Attorney review the program and hopefully the Council will sign a memorandum of agreement with the Regional Harbor Board.

**VIII PRESENTATION BY ROLAND OTTOLINI ON BEACH RENOURISHMENT PLANS (REPRESENTING THE COASTAL ADVISORY COMMITTEE)**

Mr. Ottolini, with Lee County Division of Environmental Services, reported that the CAC is finishing a long-range beach erosion control plan that will be submitted to the state this month. He introduced engineering

consultants Ken Humiston and Bret Moore who have been doing a feasibility study on Estero Island to evaluate the condition of the shoreline where there is high erosion and how to deal with it. In 1970 the Corps of Engineers authorized an erosion control project for Estero Island, but it never went into design and was never built. They are now reevaluating it and he showed a timeline which estimated that it will probably be 2002 before construction could begin because it would require reauthorization from the federal government because it has been so long since it was originally authorized. He showed another time line about how fast a project could be completed if a local government were to take on the project by itself (about 3 years.) The third alternative (which they are recommending) is where the local government starts the project and then gets reimbursed from federal government later. It would take a little longer than the second alternative because they would have to comply with all the Corps of Engineers guidelines. It could be completed in about 4 years and without additional expense to the local government. The original Corps project entailed the northern 4.6 miles of the island and included a groin structure at the north end to reduce loss at Matanzas pass. The beach berm would be 50' wide and 4' high. He thinks that is inadequate and they are recommending a berm that is 5.5' high with a width of 150'. They also recommend two shorter groin structures at the north end. They are also recommending some renourishment at the south end (70' wide), and the placement of a groin structure at the pass. The Corps plan would cost about \$2.5 million, with an annual maintenance cost of over \$900,000. Their recommendation would cost \$9 million, with an annual cost of around \$550,000. The federal share will only be about 3% of the renourishment cost and 65% of the groin construction. State beach management will fund up to 50% of the project (although our project will probably not qualify for that much because of access and parking.)

## **IX PUBLIC HEARING**

### **A CASSON 96-11-153.05V**

Charles Bigelow, attorney for the applicants, stated that the property is on the corner of Sterling and Estero. The variance request is to permit a deck which has already been constructed. The applicant was renovating the house to make it structurally sound. A small deck on the west side needed to be replaced and she didn't realize she needed permits. She hired a licensed carpenter to build the new deck and he failed to get the permit. He described the applicant as an innocent person trying to do the right thing, who made some mistakes but there was no real harm or impact because all of the neighbors say it is fine and that it doesn't impact them negatively. Mr. Roosa swore in Ms. Chris Swihura who stated that when she bought the house she had an inspection and was told that the deck, which was the only entrance, was unsafe and must be replaced. She had never owned a house before. She called some carpenters and didn't know she had to call a contractor. She got an estimate and put the deck up. A complaint was filed, she applied for a permit, and the hearing examiner decided this was an extension, not a replacement, and the variance was denied. The LPA recommended that she cut 5' off the deck, but in order to do that she would have to remove the whole deck and rebuild it. The neighbors closest to the where the encroachment is do not object to the deck. Mr. Bigelow circulated pictures of the deck. He explained that this is technically a rear setback and should be 20' back. But since this really looks like a side setback, the LPA was willing to accept 7.5' but the deck is at 2.5' now. It has already cost her about 3 times the cost of the deck and if this is passed she would have to spend even more. Mr. Reynolds expressed concern because there are so many cases like it on the island and he is concerned that the Council will have to give unlimited variances. Mr. Bigelow recommended that the rules should be applied strictly if there is evidence that it was an intentional violation of the rules to obtain an advantage, and perhaps even if the violation was innocent but there is a negative impact on the community. But in a case where there is innocence and no real injury and there is no neighborhood objection, then the Council can afford to be lenient. Mr. Roosa swore in Bill Casson, the owner of the house. He said the neighbors are pleased that they took an eyesore and made a beautiful addition. Nettie Gustison of Lee County Development Services was sworn in by Mr. Roosa. She stated that the area is zoned RM-2 and across Estero it is C-1. She recommends approval because there were extraordinary conditions (irregular shape of the lot, the house was built before zoning, the house is bounded by other homes so that the applicant cannot purchase more property to fix the problem, and because the owner hired someone to do the work and relied on that person long-distance.) The LPA agreed to 7.5' rather than the 2.5' which is requested. The carpenter was issued a warning for building without a permit. Mayor Cereceda opened the public hearing. Since there was no public comment, the public hearing was closed. Mr. Roosa asked if any council members needed to disclose any ex parte communications. Mayor Cereceda said that she walked down to see the property but did not talk with anyone. Mr. Roosa referred to the resolution he drafted and said that the second "whereas" clause should be stricken, and the figure "7.5" should be changed to "2.5". Mr. Murphy said he felt like it would be punitive and cold-hearted to require them to tear out 5'. Mr. Reynolds said that he did not think it was cold-hearted to go from 20' to 7.5' and he did not think it would be a major problem to take off the extra part. Mr. Roosa swore in Pam Houck who explained that even if the applicant had

come for the permit before building the deck, it would have had to come to the Council for a variance even at 7.5 feet because the requirement is 20'. Mr. Isler is concerned that the Council is being asked to approve a structure that no one else would have gotten approval for.

**Motion:** Mr. Murphy moved and Mayor Cereceda seconded that the variance of 2.5 feet be approved. Mr. Murphy, Mayor Cereceda and Mr. FitzSimons voted for the motion. Mr. Isler and Mr. Reynolds voted against the motion. The motion passed.

The Council took a break at 4:50 PM and reconvened at 5:00 PM.

## **B GANIM/TARICK 96-08-175.02S**

Geri Waksler, attorney for the applicants, stated that the property is on Estero between the Lani Kai and the former Hess gas station. They originally requested something that was turned down by the LPA, so the applicant listened to the LPA and came back to them with a recommendation which they did approve with conditions. She showed renderings of the building. There will be no access from the deck to the beach without going through the restaurant. They will serve hamburgers, pitas, etc. They know there is opposition to more bars on the beach, but she emphasized that this is not a bar, but a group III restaurant and will only serve beer and wine along with food and with no outdoor entertainment. There will be sufficient parking. County staff has recommended approval and stated that it will not cause detriment to the neighborhood. Carleton Ryffel, a certified planner, was sworn in. He stated that the property is in the Times Square area and currently contains 3 buildings in poor repair. It is zoned C-1 and the nearby area is overwhelmingly commercial. All the restaurants in the area except McDonalds have at least a beer and wine license. There is a day care center in the area for guests of the Lani Kai and employees, but the Lani Kai has 5 bars anyway. The area is generally unsuitable for residential use and many people have a hard time renting their property. There are a few scattered residents but it is clear that the area is commercial in character, serving tourists. It will not be an intrusion and will improve the appearance of the neighborhood. He showed some photographs of the area from the street and from the beach. Two buildings will be removed and the third will be renovated. The building they are renovating has 800 square feet and will be expanded to 1200' and they will add a deck of 785'. There will be an elevator for handicap access and it will have a new roof and will probably be done in the old Florida style. Altogether there will be a reduction in square footage on the property. They are willing to go along with the recommendations added by the LPA. Mayor Cereceda expressed concern that there was no control over making sure this really was a restaurant and not just a bar. Mr. Ryffel said there will be a kitchen on the premises and food will be served during all hours of operation. She asked about extending the sidewalk which ends at the Lani Kai. He replied that the client would like to have the sidewalk but he cannot commit to it without knowing the cost. Nettie Gustison spoke that the request was for consumption with outdoor seating, no more than 52 seats outside and 50 seats inside. It is in the urban community land use area and the restaurant is consistent with that use. The staff recommends approval with 7 conditions (no bar, outdoor seating limited to 785 feet, no outdoor entertainment, hours limited, lighting on deck shuttered, no advertisement from Estero or the beach indicating the service of alcohol, and planting a buffer.) The LPA agreed with staff recommendations but modified the hours of operation. Mayor Cereceda opened the public meeting.

### **1. MARGARET THURSTON WADE**

Ms. Wade, who lives on Palermo Circle, stated that they already have trouble with loud people at night that wake up her children, and having to sweep up their driveway in the morning. You can get just as drunk on beer and wine as on hard liquor. She also stated that the people at Batiki West were not notified individually.

The public hearing was closed. Ms. Waksler said that all the applicant must prove today is whether the proposal will adversely affect the surrounding area, not whether the Town needs another establishment that serves beer and wine or whether there is a better use for the land. Mayor Cereceda asked Mr. Roosa if the Council could add a condition requiring 51% food sales and then revoke the license if they do not meet it, and Mr. Roosa replied that they could. Ms. Waksler said she has not talked with her client to see if they would agree to the condition, but there are other establishments in the area with a 2COP license that do not have to make that proof.

**Motion:** Mr. FitzSimons moved and Mr. Reynolds seconded that the request be denied. After discussion, Mr. FitzSimons and Mr. Reynolds voted for the motion. Mayor Cereceda, Mr. Isler and Mr. Murphy voted against the motion. The motion failed.

**Discussion:** Mr. Murphy said that what is there now is an eyesore which can be improved by this request, and the Town is trying to encourage such upgrading, but he would like more assurance that it would be a

restaurant. Mr. FitzSimons said the area has changed dramatically over time but there is no rule that says that trend has to continue.

**Motion:** Mr. Murphy moved and Mayor Cereceda seconded that the request be approved. After a vote on the amended motion, Mr. Murphy, Mayor Cereceda, Mr. Isler, and Mr. FitzSimons voted for the motion. Mr. Reynolds voted against the motion. The motion carried.

**Amended Motion:** Mayor Cereceda amended and Mr. FitzSimons seconded that a condition be added that the applicant be required to prove to the Council semi-annually that more than 50% of their total revenue is from food sales. The motion passed unanimously.

The Council took a break at 6:45 PM and reconvened at 6:59 PM.

said she has not talked with her client to see if they would agree to the condition, but there are other establishments in the area with a 2COP license that do not have to make that proof.

**Motion:** Mr. FitzSimons moved and Mr. Reynolds seconded that the request be denied. After discussion, Mr. FitzSimons and Mr. Reynolds voted for the motion. Mayor Cereceda, Mr. Isler and Mr. Murphy voted against the motion. The motion failed.

**Discussion:** Mr. Murphy said that what is there now is a eyesore which can be improved by this request, and the Town is trying to encourage such upgrading, but he would like more assurance that it would be a restaurant. Mr. FitzSimons said the area has changed dramatically over time but there is no rule that says that trend has to continue.

**Motion:** Mr. Murphy moved and Mayor Cereceda seconded that the request be approved. After a vote on the amended motion, Mr. Murphy, Mayor Cereceda, Mr. Isler, and Mr. FitzSimons voted for the motion. Mr. Reynolds voted against the motion. The motion carried.

**Amended Motion:** Mayor Cereceda amended and Mr. FitzSimons seconded that a condition be added that the applicant be required to prove to the Council semi-annually that more than 50% of their total revenue is from food sales. The motion passed unanimously.

The Council took a break at 6:45 PM and reconvened at 6:59 PM.

## **C        TRANSWORLD IN REF. TO GULLWING 96-09-166.02S**

Richard McDole, authorized agent for Gullwing, stated that they are requesting licenses for sale of alcoholic beverages for consumption on premises. At their first hearing, it was decided that the adjoining property owners were not properly notified, but they were able to get public comment. So during the delay they amended their application to address some of the complaints. They added about 15 stipulations in order to win the support of the county and the LPA. The County recommended approval, but the LPA ruled against them due to the outdoor noise factor. So they have withdrawn the outdoor seating request. They went back to the LPA and addressed more objections. There will be two exhibition halls and six meeting rooms. They plan to put in a deceleration lane in front of the property. The plans call for an 8-foot fence and landscaping between the hotel and the public access so there should be no intrusion. He feels they have provided as many safeguards as possible. They are approved and permitted as a convention hotel and are mandated to have a restaurant for the hotel. It would be odd to have a restaurant in a hotel that cannot sell liquor with its food. He feels that the objections are more toward the hotel itself rather than to the sale of liquor. But the condos around all have signs out that they rent, so they really are acting like hotels too. Nettie Gustison stated that the request is for indoor service only. There is no outdoor seating. A Group II restaurant is designed to be for the patrons of the hotel. They are applying for a 4-COP-SRX license (beer, wine and liquor served in conjunction with meals) and S-Hotel beverage license. The County staff recommends limiting hours of operations to midnight. The restaurant will be located on sixth floor of the hotel and the use is clearly subordinate to the hotel. The property is in the urban land use category and the staff believes it will not cause any adverse effect on the community. The LPA recommended that it be denied without prejudice. Mr. FitzSimons asked if the Council could require that only guests be allowed to be served. It was agreed that enforcement would be the problem. Mr. McDole said originally they did not have enough parking for a group III restaurant but now they do. He would have a problem if it is only limited to guests because there will be some people attending conventions at the hotel who are staying at another hotel. He does not want to see a stipulation which they couldn't enforce. The public hearing was opened.

Mr. Capps was sworn in and stated that he lives next door to the area. He feels that it is a pure residential area. The property has not been cared for, and they were not notified when the permitting was changed from condo to convention hotel. He also talked about the extra deceleration lane. Since the school bus must stop there to let off kids in the Fairview subdivision, the students will now have to cross four lanes of traffic. He has a two petitions with over 100 signatures that asks that alcoholic beverages not be allowed to be sold at the location in order not to detract from the residential area.

**2 GARY GRIFFIN**

Mr. Griffin, manager of the Island Winds, said that he came to pass on the concerns and objections of his residents, which have been submitted in writing.

**3 GENARO VENTURO**

Mr. Venturo, a resident at Fairview Isles Condominium, gave some history of the property. If the Council approves the license, he will sell to Transworld. If the Council denies the request it will not harm the applicant because he can still sell the property to Sunstream who will build a condominium, so denying the license will not cause undue harm on the applicant. But if the Council grants the license, it will have a deleterious effect on the residents in the surrounding area. The island already has more than enough liquor licenses. The Council has the opportunity to halt that proliferation and maintain the family atmosphere in Fort Myers Beach.

**4 MARK COMBS**

Mr. Combs stated that the property owner is his father-in-law. He showed a map of the area showing that there are many hotels, condos that rent, a medical center, tennis courts, and a restaurant in the area. They are not invading a residential community.

The public hearing was closed. Mr. Reynolds said that the hotel does not fit with the density plan on the island and the distance to the other residences is a problem. But how can you have a hotel without a restaurant with all the amenities? Mr. FitzSimons did not feel that the applicant proved that their application would not have an adverse effect on the area. He did not feel that the Lee plan was complied with or that the area would be improved.

**Motion:** Mr. FitzSimons moved that the request be denied. There was no second.

**Motion:** Mr. Murphy moved and Mr. Isler seconded that the motion be approved with conditions as recommended by the County staff. Mr. Murphy, Mr. Isler, Mayor Cereceda and Mr. Reynolds voted for the motion. Mr. FitzSimons was opposed. The motion passed.

**Amended Motion:** Mr. FitzSimons moved that customers of the restaurant must be proved to be guests of the hotel. There was no second. The motion failed.

**X COUNCIL MEMEBERS ITEMS AND REPORTS**

**A RUSTY ISLER**

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

**B TED FITZSIMONS**

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

**C GARR REYNOLDS**

Mr. Reynolds referred to item XVI in the March 3 minutes, and wanted to know whether first extensions should be granted administratively or if they should come to Council for a decision. Mr. Roosa said if it is in the county code, the Town Manager can grant them administratively. Marsha Segal-George said that since the Pink Shell request was different and was for an indefinite extension, they brought it to the Council.

Referring to the minutes of February 27, item 6, he asked if a Council member is late and comes in and sits in the back then a vote is taken which results in a tie, should the council member then be called up to vote? Mr. Roosa said that if a council member is in the room, they should vote.

He mentioned a letter from Island Winds requesting a crosswalk. Mr. Gucciardo said that the request has been included in the most recent batch of RFAs and will be looked into by the road committee.

**D RAY MURPHY**

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

**E ANITA CERECEDA**

Mayor Cereceda referred to recent letter she received and reported that towing is out of control at Helmerich Plaza. Tim Anglim of Sunshine Beachwear said one of his employees was towed while at work. A group of Argentineans went in McDonalds and were towed while they were eating. She has asked Marsha Segal-George to bring the towing ordinance back up to the Council at the next meeting.

## **XI PUBLIC HEARING ON CONTRACTOR'S LICENSE ORDINANCE**

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

### **A RAY MERTENS**

Mr. Mertens said that businesses are required to go through contractors. Sometimes it takes 90-180 days to get someone out to bid because the job is not big enough. He asked if perhaps there could be some latitude. Perhaps if it is under some dollar amount (perhaps under \$4000) they could hire a licensed carpenter or a home contractor. A non-bearing dry wall does not need a licensed contractor.

### **B EVE HAVERFIELD**

Ms. Haverfield asked if there could be some way to check that contractors are working within the guidelines of the regulations of Fort Myers Beach. Some contractors put up lights that are against the turtle ordinance.

The public hearing was closed. Mr. Roosa said that Mr. Merten's concerns had to do with the building code, not this ordinance which has to do with licensing. Marsha Segal-George reminded the Council that this is identical with the County's and allows us not to have to have our own licensing board.

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

## **XII FIRST READING OF THE PARKS AND RECREATION ORDINANCE**

Mayor Cereceda read the titles. The ordinance was set for public hearing on April 7.

## **XIII OLD BUSINESS**

### **A SHERIFF'S ENFORCEMENT OF JET SKIS**

Marsha Segal-George reported that WCIND has agreed to give the Town \$6000 for enforcement this year. The Sheriff's department does not have the money because they are spending the WCIND money they have already received to buy boats. Enforcement will start April 1 and go through the end of July, then pick up again October 1. By then the Town will be in the next cycle for WCIND budget. Enforcement will be on the gulf and the bay side and will be for 20 hours per week. She reported that there are still some citation issues because she was told at a meeting that the Sheriff's office can only enforce County ordinances and not Town ordinances. Mr. Roosa passed out an excerpt from the minutes of the meeting of April 25, 1996 which shows that Mr. McDougall stated that if the Town maintains the same ordinances and wants the same coverage, there would not be any change from past years. He also passed out a letter from Mr. McDougall which stated that he intends to continue serving the Town as he has for the past years and that enhanced law enforcement requirements can be worked out in the future. Mr. Roosa said that this indicates that if our ordinances are the same as the county ordinances, the sheriff would enforce them. That is our position and what we were led to believe. He also discussed Florida statute 125 which says that the County Commissioners can enter into an agreement with the Town for law enforcement. The sheriff is taking the position that we can enter agreements directly with him. Mr. Isler expressed the reservation that when we enter into this agreement with the Sheriff, we will just start paying for the coverage that we already have and then it will be expected of us from now on. Mr. Roosa suggested that we write the sheriff to see if he has been enforcing our ordinances.

### **B REQUEST BY BEST WESTERN PINK SHELL FOR PERMIT EXTENSIONS**

Mr. Roosa said that Mr. Naylor, general manager of the Pink Shell, has requested an extension on construction permits based on the theory that if the land swap goes through they may not want to build under their current permits. Mr. Roosa advised that the Council should not be involved, and that Best Western needs to make their own business decision whether they want to proceed or not. They can let the permits expire and try again, or they can handle it administratively like any other first extension request and be given a 6-month extension. Mr. Gucciardo said that the Town has probably granted about 5 administrative extensions but this one was different because it was tied in with another event. The Council asked Mr. Naylor to speak and he said that his request was really intended to be a request for an administrative extension.

**Motion:** Mayor Cereceda moved and Mr. Murphy seconded that the extension be handled administratively and not tied to the land swap. Mayor Cereceda, Mr. Murphy, Mr. Isler, and Mr. FitzSimons voted for the motion. Mr. Reynolds voted no. The motion carried.

**XIV NEW BUSINESS**

**A SIGNAL MAINTENANCE AGREEMENT**

Mr. Gucciardo explained that this agreement is for maintenance of the one signal light in Town. The signal is being moved but not removed. The plan is that it will be blinking during season, and pedestrian-controlled off-season.

**Motion:** Mr. Reynolds moved and Mr. FitzSimons seconded that the resolution be approved directing the Town Manager to execute the agreement. The motion passed unanimously.

**B RESOLUTION DIRECTING THE TOWN MANAGER TO PREPARE A REVISED BUDGET**

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

**XIV TOWN MANAGER'S ITEMS AND REPORT**

**A VOICE VOLUNTEERS**

The Council agreed to try some public relations to see if any residents of the Town might be interested in being trained to be a Voice Volunteer on the beach.

**XV PUBLIC COMMENTS**

**A JOHN NAYLOR**

Mr. Naylor recommended that jetski enforcement should be geared mostly toward private jet ski owners and therefore should be concentrated on Friday, Saturday, Sunday and holidays and should go into August. Don't worry about mid-week. Most activity is from 10 AM to 6 PM.

**XVI ADJOURNMENT**

**Motion:** Mr. Murphy moved that the meeting be adjourned. The meeting adjourned at 8:30 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary