

**FORT MYERS BEACH
TOWN COUNCIL MEETING
MAY 19, 1997
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I CALL TO ORDER

Mayor Anita T. Cereceda called the meeting to order on Monday, May 19, 1997, at 6:35 P.M. Present at the meeting were: Mayor Cereceda; Council Members Ray Murphy and Garr Reynolds; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Attorney Richard Roosa. Excused from the meeting: Vice-Mayor Ted FitzSimons and Council Member Rusty Isler.

II PLEDGE OF ALLEGIANCE

Mayor Cereceda led the Council and public in the pledge of allegiance to the flag.

III INVOCATION

The Reverend Thomas Snapp of St. Peter Lutheran Church opened the meeting with a prayer.

IV PUBLIC COMMENT ON AGENDA ITEMS

A RAY MERTENS

Mr. Mertens spoke about the use of public property at Times Square. He heard the Town was only going to ask \$400 per table per year. Even allowing for 50% of the days to have rain, they would only have to do gross sales of \$6.85 per chair per day to have an 8% rent factor, which is an extremely attractive rent factor. The area has excellent demographics and should mean a higher rent. In addition, there are no construction costs for the tenants, and he understands the Town is even waiving bathroom requirements for the extra tables. He wondered how the Town was going to handle the insurance liability, and he doesn't see any allowance for property taxes, which would be extremely high for beachfront property. He thinks a realistic fee would be \$1000 per table per year. If they do \$34 in business per table per day, that would only be an 8% rent factor. They are getting a lot of savings, yet we are giving away the rent factor. He recommended getting an expert from the restaurant association to advise the Town on a fair figure. In Chicago they get 16% rent. Some pay \$100 per square foot and that is only for the lunch hour. He wants the Times Square area to be successful, but he doesn't want to give the house away.

B BILL SHENKO

Mr. Shenko talked about the Times Square permit agreement. He stated that he hoped Mayor Cereceda has made herself familiar with the conflict of interest laws as it relates to this issue. It looks like the permit agreement was done very quickly and leaves many issues unaddressed and contains spelling errors. Lee County has been in controversy over the private use of county property for years because of sloppy paper work. He recommended getting a written opinion letter from our attorney that this permit is revocable and not permanent. It contains no expiration date, renewal clause, rent escalator, or refund to tenants if the Town revokes the permit. It also says that all entertainment is to be approved by a Times Square entertainment committee and Town staff. Who is this committee, will they meet in the sunshine, are meetings advertised, do they file financial disclosure, and are any residents involved? How about Town Council approving entertainment instead of staff? He is demanding that the committee contain an equal number of residents as merchants, and one council member. The permit also calls for \$400 per table per year with unlimited seating, and he said that taxes alone should exceed that amount. He said that the Florida Auditor General can be very critical of giving away public property, and he recommended getting an appraisal of value and charging fair market rent. He cautioned the Council to review this matter carefully.

C BUD BROWN

Mr. Brown said that he represents the restaurant owners on Times Square. All kinds of promises were made to the owners to get them to go along with project. They have lost value of their property because of losing their curbfront. They have lost their access to their property and must gain

access through Times Square, which is owned by the town. They were promised they wouldn't have to pay for use of the land if they gave up the fight. Then the Town told them they would have to charge, but they would give them a free year. Now the Town is saying they must pay now. They just want what they were promised. They will gladly pay for security and maintenance because they consider that reasonable, but \$400 is unacceptable and they will turn it back into a street before they will pay it. They will pay \$100 per year per table for security and maintenance.

V APPROVAL OF MINUTES: MAY 1, 1997 AND MAY 5, 1997

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

VI REVIEW OF FINANCIAL REPORTS FOR APRIL

Mr. Gucciardo answered questions about individual line items and stated that detailed reports are available in the office.

VII COUNCIL MEMBERS' ITEMS AND REPORTS

A RAY MURPHY

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

B GARR REYNOLDS

Mr. Reynolds reported that he and Marsha Segal-George had talked with Kitty Taylor about the tennis facility, as directed by the Council at a previous meeting.

He handed out a paper about the bonuses, job upgrades, and new employee positions that were approved when he was absent from a previous meeting.

He said we must face the problem of parking at Bowditch Point. He feels parking must be put there. He stated that there would have been 250-300 parking spaces there if the land swap had gone through, and he doesn't recall hearing any complaints about it. He received over 150 calls during the swap discussions and about 99% wanted public parking there. He encouraged everyone to re-read the hearing examiner's report. The county told the hearing examiner that the park would be accessed by walking, trolleys, bikes, etc., but the hearing examiner does not say that there will not be parking down there. What would Lakes Park be without parking? He hoped the council would not flip-flop on their previous decision.

He stated that he will be out of town on June 17, and asked if the joint Council/LPA meeting could be moved to June 24th.

C ANITA CERECEDA

Mayor Cereceda had no items to bring before the Council.

VIII PUBLIC HEARING OF ORDINANCE CONSENTING TO ESTABLISHMENT BY LEE COUNTY OF AN MSTU FOR LAND PRESERVATION

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

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the ordinance be adopted. The vote was as follows: Mr. Murphy, aye; Mr. Reynolds, aye; Mayor Cereceda, aye. The motion carried.

IX RESOLUTION ON THE CENSUS

Marsha Segal-George said that the request for this resolution came through the LPA from the MPO. The federal government is planning to do the census a different way and may delete some pertinent information they need for planning. The MPO has asked all the cities to pass this resolution.

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

X OLD BUSINESS

A DISCUSSION OF TIMES SQUARE PERMITS

Mr. Gucciardo mentioned the letter, permit agreement, and rules and regulations that were included in the council packets. He stated that they are the result of discussions that began in October. He agreed with the merchants that it would not be equitable to charge per foot because some restaurants have unusable space (flower beds, etc.). The intention is that the permits would be for one year and then reconsidered next year. Mr. Reynolds said that it seems that this is a good start but that it needs further study. He asked if the LPA had looked at this, but Marsha Segal-George said this was more a management issue, not land use or zoning. Mr. Reynolds said he likes the idea of residents being on the committee. Mr. Gucciardo clarified that the committee only refers to outdoor entertainment. The plan is that they would come up with guidelines and then come to the Town staff, but that can be changed if the Council wishes. Mr. Reynolds said he was down in the area for the ribbon cutting and enjoyed the music a lot, but he forgot about the residents.

Mr. Gucciardo said that they are trying to recoup some of the ongoing operation and maintenance costs from those people who have commercial use of the area. Those restaurants are using public property for a commercial purpose, and it seems fair for them to help shoulder some of the costs. The \$400 fee will generate about \$18,800 which will not be enough to pay for maintenance. Mr. Reynolds asked about other people who are benefiting from the project even though don't have tables. Mr. Gucciardo said that the proposed DRA will be a taxing unit of the area which will contribute to a fund which will go back into the area. Mr. Murphy asked about a merchant who wants to put out a rack of clothes. Mr. Gucciardo said that those merchants have indicated they are not interested in pursuing that at this time, and that they did not want kiosks on Times Square. However if the non-restaurant owners want to come to the town about it, they will try to come up with a plan for them at that time.

Before Mayor Cereceda made any comments, she asked Mr. Roosa to address the question of conflict of interest. Mr. Roosa said elected officials are expected to vote on all issues unless there is a direct financial benefit for or against. Since Mayor Cereceda is not in the restaurant business, it does not affect her, and there is not a prohibited conflict of interest.

Mayor Cereceda said that last March the Council voted to accept the CRA project (although she was a dissenting vote.) At that time, nothing was mentioned about the businesses being responsible for maintenance. Now perhaps it is unfair to charge the merchants for something that the Town decided to do. For the preceding 6 years, the hook for them to go along was that this would be the benefit. But it was promised by the county, and the Town can decide to keep or not keep the promises that were made by the county. Everybody with a table will be helping pay for maintenance of places that don't have tables outside. On the other hand, some people are making money off the project, and it is a question of fairness. She said the proposed hours of operation are to be until 11:00 PM, but during season and special events, the businesses will want to operate longer. If they are not violating any laws, she felt they should be allowed to operate longer. The merchants have mentioned to her a problem with requiring ropes to segregate each business. They have all assured her that the ropes are not required to give them an area of liability, and that the alcoholic beverage board and their insurance companies agree. They also have a problem with no vehicular access to Times Square except in case of emergency. She mentioned all these things because these are concerns she has heard, not because she has a business down there. If the Council votes to send this issue back for more work, they must decide whether the tables stay or move out in the meantime. She asked Mr. Roosa to address the question of whether this permit would be a valid agreement. Mr. Roosa said the intention is that the permit is for one year, but that should be stated. Revoking is already allowed for in the parks and recreation ordinance.

Mr. Reynolds said he did not vote for accepting the CRA project either because it was not complete enough, and there were not enough signed agreements for right of way. He also mentioned that the last trolley leaves at 8:30 PM and some people were stranded after the ribbon cutting. He wondered if the council wanted to consider extending the trolley hours, or maybe flex the hours and start later in the morning. Mr. Gucciardo said that the core level of service is only until 8:30. Mayor Cereceda said that organizers of special events should anticipate the problem and pay for longer hours themselves.

Motion: Mr. Murphy moved and Mayor Cereceda seconded that the discussion be tabled.

Discussion: Mr. Murphy felt that the Council should have time to study this more. Marsha Segal-George said that the Town needs to enter into an agreement with someone to maintain the square, and the staff has gotten bids. If the Council is hoping for reimbursement for some of the cost of the maintenance contract, they need to decide how much to charge. Mr. Reynolds suggested accepting Mr. Gucciardo's suggested permit agreement, but only until end of September instead of for a year.

Mr. Gucciardo said the area is not being maintained now. Since turnover to the Town, they have asked the merchants to pick up on their property and also empty the trash receptacles, but it has been spotty at best. In addition, the area vegetation, drainage, irrigation, etc. needs maintenance. Mr. Murphy suggested that we do the maintenance agreement now, and then we will have a better idea what we are trying to recoup. Mr. Gucciardo said that based on bids, he already knows it will cost approximately \$35,000 per year. Mr. Gucciardo said that the result of signing maintenance contracts but tabling the discussion of charging for the tables is that the town will have financial obligations without any offset, and also there is some liability if we allow use of the tables without permits. **Action:** Mr. Murphy and Mayor Cereceda voted for the motion. Mr. Reynolds was opposed. The motion failed.

Motion: Mr. Reynolds moved that the permit agreements be approved with the change that the permits only go to end of September. There was no second. The motion failed.

Mr. Gucciardo said that he has received four legitimate proposals for the maintenance contract. It will include daily maintenance, trash removal, washing and sealing of bricks periodically, irrigation, and drainage all the way down to the Lani Kai. He is working with one bidder now, and will probably be recommending that the Council enter a contract with them at \$34,000. He is also working with parks and recreation about two separate issues: trash, and debris under the bridge where the parking meters are.

Motion: Mr. Reynolds moved and Mr. Murphy seconded that the staff proceed with a contract for maintenance. The motion passed unanimously.

Mr. Reynolds said that the Town needs to be protected from liability, so we shouldn't allow the merchants to use the area until they have a permit. Mr. Roosa said he is not so concerned about exposure, but that the Town needs permits in order to regulate the property. He recommended working with the permit agreement and coming up with a number that would be appropriate between now and September. It was clarified that the merchants paid no fee to the county during the construction period for use of the area. Mr. Gucciardo suggested changing the hours so that they can use the tables the same as their hours of operation. He said he is willing to delete the requirement for ropes if the merchants can show proof from alcohol and tobacco and the sheriff's department that they are not necessary to delineate their area of responsibility and liability. He said that allowing the permits until September 30 instead of one year is fine. Then the only question is whether to charge a fee or waive a fee until then. Mayor Cereceda suggested they be required to prove that the town will not be held liable. Rather than tabling the motion or extending permits until September 30, it was suggested that the Town issue temporary permits until the day after the next council meeting.

Motion: Mr. Reynolds moved and Mr. Murphy seconded that the Town issue temporary permits good until June 3 as long as the merchants provide evidence of insurance and that the Town will not be held liable, that the tables can be in use during their regular business hours, that ropes will not be required by the Town if they bring proof that they are not required by alcohol and tobacco, that references to the entertainment committee be removed, that all entertainment must be approved by the Town Manager, and that there will be no fee for use during this temporary permit period. The motion passed unanimously.

The Council took a break at 8:25 PM and reconvened at 8:30 PM.

XI TOWN MANAGER'S ITEMS AND REPORTS

Mr. Gucciardo talked about the issue of security at Lynn Hall park. The Town is committed to providing security until the end of the month. But he has talked to the merchants and they agree it is a benefit to them to have the parking lot open late, so he would like for the Town to get out and allow the merchants to take it over. That plan is acceptable to county parks and recreation. The coverage now is from 9 PM to 2 AM and costs about \$31,000 per year through the sheriff's department. The merchants should be able to hire someone for much less.

He said that the Town has been contacted by a management company about renting the space downstairs. Currently we are being charged the bargain rate of \$4.50 per foot upstairs. They originally

wanted \$7.50 per foot downstairs, and now are talking about \$5.58 for both spaces. Mr. Reynolds said that there are desks for council people, but he has not found it necessary. He wondered if it would we would need to lease more space if the Council members agreed to give up their two desks. Marsha Segal-George said that there is storage space downstairs which we don't have here. The proposal will be brought back at a future meeting.

Mr. Gucciardo said that there has been a misunderstanding about the use of Lynn Hall Park after hours. When we put security there, it was to keep the parking lot open so they would not have to tow vehicles after 11 PM. The meters are still operational but park is not closed.

XII TOWN ATTORNEY'S ITEMS

Mr. Roosa stated that the Town has adopted watercraft ordinances but excluded the Lee County marked and maintained channels. In the past, these channels were regulated by this ordinance. Now the county is recommending that we remove that restriction and let ordinance apply to the entire back bay area including marked channels. The Council directed Mr. Roosa to prepare an amendment.

He said that code enforcement has issued a violation and fine against the building owned by Paul and Barbara Bogdansky on Estero. They have filed an appeal with the circuit court. Mr. Roosa asked for authorization to represent the Town in that action. The Council said that it seems like the county should back up the problem since they caused it, but Mr. Roosa pointed out that the way the county might solve the problem might be adverse to the Town's best interest.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that Mr. Roosa be authorized to represent the Town in this appeal. The motion passed unanimously.

XIII PUBLIC COMMENT

A PETER LISICH

Mr. Lisich stated that he is opposed to any and all parking at Bowditch. He urged that the decision be brought to the public and the beach where it belongs. He passed out copies of minutes from the Bowditch Park Committee meetings from 1994-1996. He also wanted to respond to Mr. Reynolds letter and stated that Phase II does not include parking. He said the Council took that action without it being an agenda item and without public comment. The letter says Mr. Reynolds does not think that the park can be used by the number of people who want to use it without providing public parking. Mr. Lisich said they could put in 1700 parking spaces so there would be enough, but that doesn't make sense. We are public sector not a private business. You have to think of the good of the public and the neighbors. There was unanimous opposition to the land swap, but 1/3 of the parking is still not acceptable. The hearing examiner questioned where the public would park and he was told that they would come on bicycles, on foot, or by trolley.

B ROBERTA BRIGHT

Ms. Bright spoke about the suggestion that a committee be formed regarding entertainment at Times Square. She said you can committee yourself to death. The Council represents a cross-section of the community better than any committee, and they are elected officials, so she felt that they can decide what kind of music is allowed at a workshop. Regarding parking at Bowditch, she goes to a lot of state parks. The trend is not to allow parking. You must park away and take a tram. It is not an unusual concept to park off-site. But it is a county issue, not a town issue.

C HELEN SLINGERLAND

Ms. Slingerland lives at the Privateer and is concerned about the beach movie theater project. She hears that they are expressing interest again and she asked if anyone can give an update as to where it is going. The mayor explained that according to the Council's policies and procedures, the public comment section is not designed for questions and answers. She suggested that Ms. Slingerland speak with the Town Manager after the meeting for an update.

D RAY MERTENS

Mr. Mertens passed out a sheet about parking at Bowditch. He understands that they are concerned about the traffic. There is a lot of traffic on his street too because there is not enough parking on the island. It may cause a problem to some, but we are not always going to get our own way. The Council is not always going to be able to keep all of the county's promises. The County made inconsistent decisions and that is why we incorporated. He advised the Council not to get drawn away by that. Try to be consistent in their decisions. We elected them to make decisions, not to keep everyone else's promises.

E BILL SHENKO

Mr. Shenko questioned the \$200,000 grant for a band shell on Times Square. The grant appears to require matching funds of \$800,000 from the Town. It looks like the Town is planning on spending another million dollars in Times Square and he wanted to know what the town intends to do about it.

Mr. Gucciardo clarified that the grant was to expand and improve the Times Square and Estero Boulevard area and might include pavers, lighting, benches, etc. It also might include a band shell but that would have to be a decision of the council and was not a primary objective of the grant proposal. The grant application stated that our matching funds are the \$2.3 that has already been spent in the county project. The grant committee apparently found that acceptable as our match.

XIV ADJOURNMENT

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the meeting be adjourned. The meeting was adjourned at 8:57 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary