

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
JUNE 2, 1997**  
Nations Bank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I CALL TO ORDER**

Mayor Anita T. Cereceda opened the meeting on Monday, June 2, 1996, at 3:06 P.M.  
Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Rusty Isler and Ray Murphy; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Attorney Richard Roosa.  
Excused from the meeting: Council Member Garr Reynolds.

**II PLEDGE OF ALLEGIANCE**

All assembled recited the Pledge of Allegiance to the flag.

**III INVOCATION**

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

**IV PUBLIC COMMENTS ON AGENDA ITEMS**

**A BILL SHENKO**

Mr. Shenko expressed concern about the Times Square "giveaway". The Council has the benevolence to give away this land, but they should consider the consequences. There will be noise and alcohol emanating from public property. The permit says outdoor entertainment is OK as long as the Times Square merchants and the staff agree. When does it become offensive to staff? When the noise reaches their homes on the south end? The Sheriff has already said he's not going to enforce our ordinances. If these perpetual licenses are issued and the sheriff goes to enforce noise problems, they will say the Town gave them the right by issuing the permit. He said the Town must require that all entertainment be indoors, facing away from street, and make them comply with the state statute regarding breach of peace. He also said the Town must require that the park close at a certain time. Make sure we are getting fair dollar value for the space we are giving away on Times Square.

**B BRIAN SCANLON**

Mr. Scanlon spoke on behalf of the Times Square Merchants Association. They want the permits to include the following: the maintenance fee should be based on the number of tables that can be used in area; the fee for the initial 6-month period should be \$200 per table, then \$400 starting in December for six months; the lease should be for one year with 20 one-year options; the annual fee should increase at the consumer price index with a maximum of 5% in one year; there should be a fee abatement in case of disaster; there should be no retail kiosks or tables allowed; the lease should be transferable; and there should be no additional fee for entertainment permits. In response to Mr. Shenko, he said they are not asking for open containers and they want some kind of restriction so that people are not wandering around with open containers. As for noise, they complain themselves if the noise is too loud. They want to regulate themselves so they will not have competing bands or people complaining. They want to make the area nice for Fort Myers Beach, not to make people mad. He brought petitions saying how much people like the outdoor entertainment. Two million dollars was spent to provide a nice outdoor entertainment area, and it should be used that way.

**V APPROVAL OF MINUTES**

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

**VI PUBLIC HEARINGS**

**A RUSSELL WOODRUFF 97-03-250.05V**

Mr. Roosa swore in Mr. Joe Dubek, the architect for Mr. Woodruff for the property on Sand Dollar Lane. Mr. Dubek said that Mr. Woodruff wants to increase the size of the house gradually and to improve the outside appearance so it will fit in with the neighborhood. It has a one-car carport and the owner wants to turn it into a 2-car enclosed garage. The required setback is 7.5 feet on the side, which would only allow a garage that would be 18' wide, which is not enough. The front setback requirement is 25 feet, and they are asking for a variance to 19.5'. They would like a variance to 3.4' on the side, but can live with 5', which was recommended by the county staff. The house is on a cul-de-sac, and if the lot lines were straight, they would not have to ask for the variance on the front. The other houses in the area mostly have two-car garages. They cannot move the house to accommodate the setback.

Mr. Roosa swore in Nettie Gustison. Ms. Gustison, with Lee County Development Services, clarified that the setback is to side of the building, and 3' is allowed for roof overhang. She stated that the lot is zoned RS-1 and that the houses to the south and west have 2-car garages. The owner is limited because of the location of the house on the lot and because it is located on cul-de-sac. The staff believes there are extraordinary circumstances, but does not believe that 3.4' is the minimum that would give relief. The average 2-car garage is 20 feet wide, which would give a 5' setback and that would not be injurious. So they recommend denial of 3.4', but recommend approval of 5' on the side and 19.5' on the street side as long as it is limited to a garage addition. At the hearing in May, the LPA recommended the same thing.

Mayor Cereceda opened the public hearing. There being no public input, the public hearing was closed. Mr. Roosa explained that he has split the requests into two resolutions.

**Motion:** Mr. FitzSimons moved and Mr. Murphy seconded that a variance of 5' be approved for the side setback, limited to the north side for a garage addition. The motion passed unanimously.

**Motion:** Mr. Murphy moved and Mr. FitzSimons seconded that a variance of 19.5' be approved for the front setback, as conditioned for use only as a garage. The motion passed unanimously.

## **B WIDRIG & LAND 97-03-111.05V**

Mr. Roosa swore in Gene Whitley, who represents two neighbors who have adjoining lots. They have mirror-image houses, with the garages next to each other. Each owner would like to increase their single-car garage to a double. Instead of the required 7.5' setback, they would need 6', which would leave a distance of 12' between the two houses. It would only impact the two parties. Ms. Gustison stated that the area is zoned RS1 and that several houses in the area already have 2-car garages. The houses cannot be relocated, and the problem was not self-created. The staff recommends approval, limited to 6' from both sides and for use as a garage. The LPA recommended approval with the same conditions. Mayor Cereceda opened the public hearing. There being no public input, the public hearing was closed.

**Motion:** Mr. Murphy moved and Mr. FitzSimons seconded that the variance be allowed as conditioned. The motion passed unanimously.

## **VII COUNCIL MEMBERS' ITEMS AND REPORTS**

### **A RAY MURPHY**

Mr. Murphy said that he has been approached about parking at Bowditch. They want it to be settled locally rather than by the County. He asked the Council to reconsider their stance telling the County to go ahead and build the parking lot, especially in light of the traffic studies showing the impact on that area. Mr. Isler stated that he is an advocate of parking at Bowditch. He understands that the surrounding landowners are averse to it and he probably would be too. But he feels that it is a small parking lot, there has been three months of public input, and that the consensus is that people want parking there. It will benefit residents because they will be able to make use of a semi-private park nine months of the year. It will be a public service to residents and the county. He does not think 70 places will impact overly. Mr. Murphy said his point is that the Town Council should get to decide this rather than the county. Most of the responses he got were from county people, not beach people. And the decision should be part of a comprehensive parking plan down here. Mr. Isler said he also feels we need central parking at Times Square, but that we need both. Park and ride does not work without it. But there is the politics of who is going to pay for central parking. Is it the residents' duty to put parking in at the bridge, or will the county? The county probably will not, so the likelihood that it will get built soon is pretty remote. Mr. Murphy said he talked to Ray Judah who asked if we had the support for a parking garage down in Times Square. He

interpreted that as his support for the project. Mr. FitzSimons said he is a supporter of making decisions in the community. However this issue should be part of a broader scheme of things. He wants control over all public land in the Town, including beach accesses, Bay Oaks, parks, and perhaps even Estero Boulevard. We need a long-range plan, which we are working on in our comp plan. He is ready to sit at the table with Lee County to see about the Town taking responsibility.

**Motion:** Mr. FitzSimons moved and Mr. Murphy seconded that the staff be directed to approach Lee County about having workshop discussions on the use and administration of public lands on Fort Myers Beach. **Discussion:** Mr. Isler questioned whether the Town should be responsible for Lee County properties like Bowditch and Bay Oaks. Mr. FitzSimons said that the Town is responsible for roads that connect to the beach accesses, but the access itself is the responsibility of the county. When the big storm comes, we will have county and town both trying to decide where the responsibility lies. He wants to centralize the decisions. Mayor Cereceda said if county decides to meter the accesses, the revenue will go to the county. Mr. Isler said he thinks it is a positive to have the county on the island. We have plenty to be responsible for already, and the county does not do a bad job on those items. We should work on uncontrolled growth and permitting and make an improvement on the island. The County does a good job of the parks. Mr. FitzSimons said he does not think they are doing a bad job, but we need to have centralized decision-making. The county owns Bowditch and can make the decisions on it, but it impacts us. Bay Oaks is on the hit list for abandonment. If we want it kept going, the Town will have to take it over. Mayor Cereceda said that during the land swap, Mr. Isler pushed for the Town to have a say, not the county. She does not think it is a dead issue and could happen again. Mr. Isler said the wishes of the people want parking there. It is a low-impact shell lot, and has few spaces, so we should experiment and see if it flies. Mayor Cereceda said we need to look at the big picture and not use a bandaid approach. She said that she is concerned because the letter went to the county without any public hearing and without it being on the agenda, so she understands why the people on the north are upset. Mr. Isler feels that parking was always an issue in the land swap discussion and he feels there was plenty of public input. Mr. FitzSimons said he thinks most of the comments about parking at Bowditch came from off-island. He does not think the Council is here to serve all of Lee County. He feels we are to serve the island residents. Mr. Isler said the people he knows on the island want parking. Mayor Cereceda said that the bottom line is that we should be in on the decision-making on anything this side of the bridge, even though we don't own it, because we have to deal with the impacts and the burden. Mr. Murphy said parking is part of the overall traffic problem. He said the county can't feel the impacts like we do who face it every day. He is not angry with the county. Mayor Cereceda said it would be proactive to say where we want the Town to go. The Town has proven it can exist, but the community wants more than just existing. We must have control over our boundaries. Mr. Isler said he wants to aggressively support parking because he feels that would be representing the people who elected him. How are you going to get a better feel for how the people feel than all the phone calls and letters they have already received? Are you going to put it to a referendum vote? He feels it would overwhelmingly pass. Mayor Cereceda said it has never been an agenda item. She also said that inaccessibility is not necessarily a bad thing. If too many people can reach some place, it changes it. As it stands now, the county could decide to change that 70 parking spaces to something higher. **Action:** Mayor Cereceda, Mr. Murphy and Mr. FitzSimons voted in favor of the motion. Mr. Isler was opposed. The motion carried.

Marsha Segal-George said this sounds like a long-range discussion with the county. She asked if they wanted to tell the county to go ahead with the Bowditch decision. The Council said yes, but they want input. Mr. Roosa verified that this action did not rescind the earlier decision to put parking in.

Mr. Murphy noted that we have a comp plan in process but the wheels are slow. There are lots of committees, but nothing ever seems to get done with regards to traffic or parking garages. He wanted to challenge the staff and council to get something going, by actively working with the county, the state, or whoever it takes to get something done. He would like to take Commissioner Judah up on his interest in the parking garage, and maybe it will snowball. He challenged them to have a plan within a year from today. Mr. Isler said everyone wants parking but when it comes down to money, how is that going to play out? Will this community support spending money to meet the needs of visitors? Is the county going to spend money on it? Mr. Murphy said you won't find out until you start asking. Mayor Cereceda said

people will come, no matter what, but residents have to deal with the impacts and traffic. You can look at it as providing parking for visitors, or you can look at it as relieving traffic problems for the people who live here. Mr. Isler said you can make the point that if you build 1000 places, even more visitors will come.

**B RUSTY ISLER**

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

**C TED FITZSIMONS**

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

**D ANITA CERECEDA**

Mayor Cereceda said she has been talking with people about getting the Mainstreet program going. She has a meeting next Monday to discuss how to approach this. She hopes to have a presentation on June 16.

**VIII UPDATE ON THE LPA BY JOHN MULHOLLAND**

Mr. Mulholland said that the LPA had four meetings in May. Mr. Spikowski gave a program on traffic and community design. They held three hearings, two of which were heard by Council today, and the other of which was dropped by the applicant. They heard about a proposed design for a Waffle House. Mr. Van Duzer reported on his subcommittee, which has gone up and down the island estimating the current building heights. Mr. Kidder's subcommittee on signs presented the LPA with a 27-page ordinance on signs. Mr. Mulholland's subcommittee on back bay and harbor issues has also met. There will be a joint meeting with the Council on June 17 to discuss two (or possibly three) elements of the comp plan. The Council will see the utilities and stormwater elements, and perhaps the community design element. Marsha Segal-George added that Mr. Spikowski will walk the Council through the comp plan process again, which is tedious and complicated. The LPA is working on a set of zoning ordinances (such as signs, building height, and accessory apartments), which the LPA will hear in September and October and will come before the Council in the Fall.

**IX FIRST READING OF ORDINANCE AMENDING THE VESSEL CONTROL AND WATER SAFETY ORDINANCE (96-26)**

Mayor Cereceda read the titles and set the ordinance for public hearing on June 16. Mr. Isler asked if the only change is that the speed limit would apply outside of channel as well as within. Mr. Roosa explained that the county attorney has informed him that the county ordinance no longer applies. Now there is no speed restriction in the channels within 500' of the shore. Mr. Isler said they should not make the whole back bay an idle zone. If there is going to be planing, it should be in the channels. Marsha Segal-George said if we go back to the original language, it will probably fix the problem. It was also noted that Section 4 mentioning the LPA needs to be removed or corrected. The Council decided to send this back for first reading on June 16 rather than holding the public hearing.

**X DISCUSSION OF SETTING FEES FOR USE OF RIGHT OF WAY**

**A DISCUSSION OF MEMO**

Mr. Gucciardo said the memo gives more background information on the recommendations that were made at the last meeting. In addition, the Council has been given the memo from the Times Square Merchants Association outlining the eight items they would like to see added. He clarified that the recommended fee was not an attempt to get fair market value, but a reasonable return on expenses incurred. He still recommends \$400 per table per year. Mr. Isler said if everyone in Times Square had a fee attached, you could argue for that it was for maintenance. But a fee for tables is another issue; it is a permit fee or a rent fee, and should not necessarily be for cleanup. The taxpayers pay some and the restaurants with tables pay some, but shouldn't there be a third piece so that everyone with a business on the Square pays part? Mr. Gucciardo said the DRA is being worked on and will encompass the entire overlay district. The TIF money that is generated will go back in that area which will help offset some of the cost. This will come from all property owners in the overlay district. The permit agreements are only for the five who have sought the right to use the public right of way. The permits do not say the money will be used for a particular thing. The maintenance cost includes water, lighting, landscaping, etc. The merchants want it to be designated as a maintenance fee, since they feel they were promised they wouldn't have to pay a lease fee. Mr. Isler said that if the tables are licensed or permitted like a car, why would they want to have 20-year renewable lease, price index, abatement, etc? Mr. Gucciardo said his

recommendation does not include any of the merchants' requests. If they have 10 tables in season and decide to cut back in low season to 4, they still pay for 10. They can put 12 out there at same price if it is still safe and within their area. He has let them determine how many tables they will have. Nobody is forcing them to have the tables at all. Mr. Murphy said that if they are going to put tables in the public right of way, it is reasonable to expect them to pay for it. We just need to set a reasonable cost. Mr. Gucciardo clarified that the other owners in the Square who do not have tables do not contribute other than any other taxpayer, until the DRA is in place. These permits would generate about \$18,000, and parking meters will generate about \$15,000 toward the total cost \$50,000. Mr. Isler said that people who have parking on the pavers should help pay because they are causing a need for cleanup because of the oil. Mr. Gucciardo said that there is no parking in public right of way, but only on private property, even though it has pavers in it. We will have to maintain the improvement area including the private property. He said we may have to do assessments for something like that if Council directs. Mr. FitzSimons said that originally the project included much more and the county did some things that this Council did not recommend (such as undergrounding utilities). 90% of the money is from residents, not from the business owners in the area. Now those same residents are still going to be asked to help with the upkeep of the area. He wants to look into how the maintenance can be worked out by those in that area because none of the work went into the residential area. Mayor Cereceda said she feels the businesses have paid because they were closed for months because of construction, and there were promises made by the county that they would not have to pay for using the area. Some promises cannot be kept by the Town and should never have been made by the county.

**B RESOLUTION ESTABLISHING A REASONABLE FEE FOR USE OF TIMES SQUARE**

Mr. Gucciardo recommended making the permits a one-year agreement as suggested by staff. Mayor Cereceda recommended waiving the fee until October 1 and then charging \$400 per table per year for the fiscal year starting October 1. Mr. Gucciardo said the TIF will probably not generate a significant amount of money. The TIF takes away from Town's general fund, and is not an extra tax on the property owners. It is only based on the increase in property values. Marsha Segal-George said that she thinks their recommendation is low, but they are trying to balance the problems the merchants had in construction and promises by the county; otherwise they would have recommended a much higher fee. Mr. FitzSimons said that the Town must have good control over the activity there. Mr. Gucciardo said the Town Manager can pull the permits at any point if they do not comply. He does not want to get too specific on such details as decibels. He would rather try general rules and see if it works. If not, the permits can be pulled.

**Motion:** Mr. Murphy moved and Mr. Isler seconded that the resolution be adopted at \$400 per table per year. The motion passed unanimously.

Mr. Gucciardo said that a related issue is security at Lynn Hall Park. The Town has been paying to have off-duty deputies patrol from 9 PM to 2 AM for the last 6 weeks. He would like to recommend that the Town get out of providing that security and let the merchants take over the cost if it is perceived as a benefit to them to keep the park open. The Council agreed.

Regarding code enforcement and ticketing the merchants for non-compliance, he stated that he did not consider the purpose to be revenue generating, but to force compliance. Some of the restaurant owners in the Square got ticketed, and he asked if the fine can be rescinded since they have made a good faith effort since then to comply. Mr. Roosa said that the Town Manager can withdraw the charges which means the merchants won't have to go to the hearing.

Mr. Roosa asked for a clarification about the hours of operation of the outside tables. Originally 11:00 PM was recommended, then the Council decided to let the businesses use them as long as their businesses are open. It was clarified that only one merchant is open until 2:00 AM. It was also clarified that they are just talking about the use of the tables, not live entertainment hours. Mr. Roosa said it would be good to add a statement that the permit does not exclude the state statutes regarding breach of peace. Code enforcement will be pursuant to the parks and recreation ordinance.

**Motion:** Mr. FitzSimons moved and Mr. Murphy seconded that the hours for use of the outdoor tables be from 6 AM to midnight. **Discussion:** Mayor Cereceda asked about holidays and special events such as the shrimp festival. Mr. Roosa said that the merchants could request a special permit. **Action:**

Mr. FitzSimons, Mr. Murphy and Mr. Isler voted in favor of the motion. Mayor Cereceda was opposed. The motion carried.

The Council took a break at 5:50 PM and reconvened at 6:00 PM.

## **XI NEW BUSINESS**

### **A APPROVAL OF CONTRACT FOR TIMES SQUARE MAINTENANCE**

Mr. Gucciardo said that the proposed contract with Lawler's Lawn Maintenance will be attached as an addendum to the Town's standard contract. Mr. Roosa has recommended eliminating the late fee and changing the cancellation clause to 30 days, and the contractor has agreed to those changes. Mayor Cereceda questioned the wording that garbage pickup will be "only if needed" on both days of the weekend. Her guess would be that trash accumulation would be greatest on the weekend. Mr. Gucciardo said that in order to get paid, the work must be done to our satisfaction.

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

### **B APPROVAL OF INTERLOCAL AGREEMENT WITH LEE COUNTY PARKS AND RECREATION REGARDING PARKING METERS**

**Motion:** Mr. FitzSimons moved and Mr. Isler seconded that the agreement be approved. The motion passed unanimously.

Regarding the discussion of the use of tables, Mayor Cereceda asked about the merchants' request for abatement in case of disaster. Mr. Roosa said that this permit would be like the county's occupational license. They do not guarantee that you will have a business when they issue the license.

## **XII TOWN MANAGER'S ITEMS**

Marsha Segal-George reported that Town had applied to the state for money for comp planning. We were told "no" because there was no money put aside for new towns. They offered help and expertise but no money. Rep. Livingston felt that was unfair, so he has put in a request for \$40,000 for us for this year and plans to do so for next two years also. If the governor signs it, we will be receiving it.

She said that Commissioner Judah has requested that the Town nominate him for a seat on the Florida Constitution Revision Commission. She understands that Commissioner Manning has asked Sanibel to appoint him. But since we have not received a request from Mr. Manning that it does not present a conflict. There is a strong feeling in the League of Cities that the only way to deal with the problems in the municipalities is through constitutional revision so it is an important appointment.

**Motion:** Mr. FitzSimons moved and Mr. Murphy seconded that the Town nominate Ray Judah for the Commission. The motion passed unanimously.

Mr. Gucciardo reported that he has met with the fire marshal and the sheriff's department regarding the 4<sup>th</sup> of July. He will write a memo and put it on the agenda for June 16<sup>th</sup>. He will also be doing an updated memo on emergency operations, pre- and post-disaster plans, and changes since last season. This will also be on the agenda on the 16<sup>th</sup>.

He gave an update on the joint effort with the Town, county and school district for the purchase of basketball hoops. The school board will install and maintain them, the county has approved the specifications, and the Town should be ready to order them soon. The cost for four 10' goals will be just under \$2500.

**Motion:** Mr. Isler moved and Mayor Cereceda seconded that up to \$3000 be approved for the purchase of basketball goals. **Discussion:** Mr. FitzSimons expressed reservations about the Town getting into this category of spending. Mr. Isler said that since the school board is taking ownership and will install them, that the liability is low. It will be good for the school and the whole town.

**Action:** The motion passed unanimously.

**XIII TOWN ATTORNEY'S ITEMS**

Mr. Roosa stated that the county attorney has sent a letter saying that the county would like for the Town and the Sheriff to come up with an agreement regarding enforcement of the Town's ordinances. He recommended that the Council set a meeting with the sheriff to work out the details. Mayor Cereceda said she would like to have that meeting and make the sheriff say publicly why what he said last year does not hold this year. It was agreed that the staff will try to schedule the sheriff for the meeting on the 16<sup>th</sup>.

**XIV PUBLIC COMMENT**

**A FLIP HARBY**

Mr. Harby told the Council not to use the taxpayers' dollars to support private industry. The Town knew a year ago that this issue would come up and they still have not made any progress. Everyone including T-shirt shops and nail painters should have to be assessed too. The numbers don't add up and taxpayers' dollars are going to have to go into it to maintain Times Square, and he is not in favor.

**B CARLETON RYFFEL**

Mr. Ryffel said he attended a Parks and Recreation meeting, and they recommended that nothing happen about parking at Bowditch until the Town and the commissioners get together to discuss the matter. They are concerned about the traffic implications and felt that a comprehensive look needs to be taken on the whole issue of parking and traffic. The decision rests here, and it doesn't just affect people who live on the north end.

**C PETER LISICH**

Mr. Lisich said 4<sup>th</sup> of July last year was frightening, with fireworks on the beach, and he hopes the Town figures out something by this year. He also thanked the Council for making parking at Bowditch part of the comprehensive plan of the whole island, not just a contest to see who makes more phone calls. He thanked them for giving the county the message that we want to be involved.

**D JOHN LALLO**

Mr. Lallo of Pete's Time Out said that the permits for tables is not just a question of money. He asked Mr. Gucciardo to present the 8 items from the Times Square merchants, but he only recommended the original proposal. He did not feel that the Council even considered the proposals. Please revisit this again before the meeting is over or he will pull his tables.

**E ANDY PRIEM**

Mr. Priem said the Council needs to spend more time on policy rather than minute decisions. The question of maintenance has many policy questions, and if they answer those, the staff can deliver the solutions. Decide whether the merchants should contribute 100%, 50%, etc., then the staff can come up with a proposal that fulfills this policy position. He was on the charter review committee, and it is clear that the Council should make policy, and the Town Manager should implement that policy.

He also spoke about council member' time. The Council should not be passing motions during that time. They should discuss items then bring them back. The decision they made did not get public notice. Either change the policy or follow the policy.

Regarding Bowditch, the Council has said they want to hold off until they can talk to the county on all the public lands. You don't have to own all the pieces. You don't have to own FEMA before you can require their regulations. If you have a policy that you don't want to deal with things until you have the overall plan, Times Square wouldn't exist today. When you have an item that is this close to fruition and funds are available, you should make a decision one way or another and convey that to the county. The county owns that land and they can do the parking without a variance. It seems you are holding it hostage until you have a long-term policy. Why not add the question to the referendum?

The parking garage decision should be held off too if you are waiting for a comprehensive plan. He hopes we are not bartering the swimming pool funds for a parking garage.

**XV ADJOURNMENT**

The meeting adjourned at 6:40 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary