

**FORT MYERS BEACH
TOWN COUNCIL MEETING
SEPTEMBER 8, 1997**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYRS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, September 8, 1997 at 6:34 P.M. Present at the meeting were: Mayor Cereceda; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Town Manager Marsha Segal-George; Assistant Town Manager Terry Dillon; and Town Attorney Richard Roosa.

Excused from the meeting: Vice-Mayor Ted FitzSimons

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by the Reverend Thomas Snapp, pastor of St. Peter Lutheran Church.

IV PUBLIC COMMENT ON AGENDA ITEMS

A JOHANNA CAMPBELL

Ms. Campbell spoke on the towing ordinance. She is not a fan of towing because she has had business vehicles of hers towed in the past. But we are putting an unfair burden on the towing operators by making them accept cash, check or credit card, because checks and credit cards can be stopped the next day.

B CHARLES IVERY

Mr. Ivery, owner of Nemesis Exotic Body Piercing, said he is still in favor of the ordinance, but he wants the council to be aware that there are 17-year-old mothers who comes in with their husbands who wants to be pierced. He won't be able to do it on Fort Myers Beach if this ordinance passes.

C FLIP HARBY

Mr. Harby spoke against the 3% utility tax. We went through it last year and the public cried out and said not to tax our utility bills. He hopes the public will do that again. He questioned what properties would be bought and what we would do with the land. How much is it going to cost to keep up the property? He encouraged the council not to enact the tax.

D RON ANDERSON

Mr. Anderson, of All Florida Towing, spoke against the towing ordinance. He said the county ordinance already addresses this problem, and requiring a license to deal with the city is just another tax. The prices are too low, because there are higher expenses with this type of tow. They are more difficult because wheels are turned, there are no keys, and they must make tight turns to get them out of the parking lots. Also you can't regulate people being nice. It will not fix the problem.

E BRIAN AGID

Mr. Agid, of Red's Express, is not happy with the towing ordinance. To run a towing business is very expensive. He wondered how the town came up with these rates. What research did they do? There is no way he could run his business on those rates and he doesn't know anyone who could.

F BRIAN SCANLAN

Mr. Scanlon spoke about the request for undergrounding on Old San Carlos. He stated that this is just a request to see what the cost would be. The study would cost about \$2500 to do the engineering study. This is an integral part of the overlay zoning plan. He would like to be in the overlay zone and build out to the street, but if he does, the building would be right under the power lines. Many people in the Times Square area are very excited about turning this area into a nice tourist area.

G MARIANNI FOX

Ms. Fox, of Alligator Towing, said she worked with Lee County for five years to get a towing ordinance for non-consent towing. She thinks the price is probably too cheap and we need to sit down with the business owners. It is a lot different to tow cars from a parking lot than from someone's

home. Her company does not take private checks, but she will take them to the bank at no charge. She knows being nice is the key to a successful towing business.

V APPROVAL OF MINUTES: AUGUST 18, 1997

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

VI INFORMATIONAL PRESENTATION ON DIAMONDHEAD

Marianne Monsrud spoke for Sunstream about the Diamondhead project. The number of units has been reduced from 154 to 124, which eliminates 3 floors and the parking deck. There will now be 12 floors over parking. They will be talking with the Town about the sidewalk area including benches and shade trees, and possibly an off-street trolley stop. They started driving pilings on August 25 and should be finished around October 17. They are driving the pilings from 7 AM to 5 PM Monday through Friday and occasionally on Saturday. They are expecting to open in November 1998.

VII PROCLAMATION ON INDUSTRY APPRECIATION WEEK

Mayor Cereceda said that the proclamation has been mailed to the Office of Economic Development and will be read at the Horizon Council luncheon next week.

VIII PROCLAMATION ON CITIZENSHIP DAY AND CONSTITUTION WEEK

Mayor Cereceda read the proclamation naming September 17 as Citizenship Day and September 14-20 as Constitution Week. Mr. Charles Murtaugh, representing the Sons of the American Revolution, accepted the proclamation. It will be presented at the Daughters of the American Revolution luncheon.

IX EXPRESSION OF THANKS FROM BAY OAKS FOR CROSSWALK AWARENESS DAY

Vicki Massey presented a framed certificate of appreciation to the council for their support of the fifth annual Crosswalk Awareness Day. After a hot hour of picketing the crosswalks, the children enjoyed their lunch at McDonalds sponsored by the Town Council.

X COUNCIL MEMBER ITEMS AND REPORTS

A RUSTY ISLER

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

B RAY MURPHY

Mr. Murphy reported that he and Mayor Cereceda and John Gucciardo had an informative time at the Florida League of Cities convention. He also reported that he had received a call that the Cub Scouts will have a program called Our Town USA. They would like to invite any council member or staff to attend and discuss how the town works. He also brought a newspaper article about a bay up north that he submitted to the staff for information.

C GARR REYNOLDS

Mr. Reynolds reported that at the MPO meeting they said that the south end sidewalks would be paid for out of ISTEAF funds. He said they have been trying to get the Metro Parkway extension moved up higher on the project list. It has now been moved up to #2. He encouraged people to let the commissioners know that they think this extra north-south corridor is important because there is already gridlock from Bonita to Fort Myers.

He commented about the ruling from Mr. Roosa that a member of the LPA could also be on the council. That would mean that that person would be voting on the recommendation and the final ruling. He does not think that is right. He also thinks the attorney general's ruling does not apply to this issue. He believes that anyone who runs for council should not continue to serve on the LPA while they are running or serving. He would like Mr. Roosa to reconsider his opinion.

D ANITA CERECEDA

Mayor Cereceda said she attended the last TDC meeting and it went very well. They have agreed to add a line to their agenda which will allow the municipalities to speak. They will be sending all the cities a packet of the agenda items. If the town has any comments, they will be able to speak during that portion of the meeting. It was not what we asked for, but it accomplished most of what we wanted. She also said the Florida League of Cities convention was very interesting and informative. The most popular class was the one that told what you should and shouldn't say to the media, while the class on historical preservation was practically empty.

XI FIRST PUBLIC HEARING ON THE BUDGET

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

A FLIP HARBY

Mr. Harby said the carryover from last year's ad valorem is included in the revenue figures, and that makes it look like an overstated budget. It also includes revenue from the grant on the Long property, which we do not even have yet. With a carryover of \$1.7 million, we are doing well, but the council still wants to tax them for 3% of the utility bill. He asked if some of that carryover funding couldn't be used for land purchase instead. Mrs. Segal-George said there are statutory rules that govern how we must show the budget. The utility tax will come out until it is voted on by the public.

B JOHANNA CAMPBELL

Ms. Campbell said she has no problem with the item about matching the county's expense on Bay Oaks, but she would like to know if the town will have any input on how Bay Oaks is managed. What will we be getting for our money? Mrs. Segal-George said the Town's share will be half of net, so any revenues that come in to Bay Oaks will be taken off first before it is split. We will enter into an agreement with the County regarding Bay Oaks. We want all the services that were offered in the past and we want input on how the facility is run. There is a survey being run that will show how much of Bay Oaks is used by town residents and how much by people off the island. They also would like to form an advisory board of town residents.

The public hearing was closed.

Mr. Reynolds questioned several expenses including the expense for the town manager's travel, expenses, books, etc.; aid to private organizations; and Times Square maintenance. Mrs. Segal-George said that it is being researched now about covering the maintenance through a special taxing district. He also questioned the budget for the planning consultant. Mrs. Segal-George said that this is part of the two-year contract plus the transportation consultant that the council has already approved.

Mr. Isler asked if we could change the title to "community service" from "aid to private organization." It was agreed to make that change. He also asked about water enforcement, Times Square capital improvement, and office space.

Mayor Cereceda asked if any of the council members ever turn in any expenses. It was generally agreed that, although the money is available, the council members have not been requesting reimbursement.

Mrs. Segal-George said that the changes that we know about now will be included on an errata sheet for the meeting on the 22nd. Any further changes will be decided by the council on that night.

XII PUBLIC HEARING: NUISANCE ACCUMULATION ORDINANCE

Mayor Cereceda read the titles and opened the public hearing.

A RON KIDDER

Mr. Kidder said his problem is the time frame that is allowed for complaints to be resolved. He would like it to be shortened so problems can be resolved sooner. He also does not think it covers enough nuisances that neighborhoods have to put up with on this island.

The public hearing was closed.

It was clarified that this ordinance is substantially the same as the county ordinance. Mr. Roosa said the time frame was an attempt to balance the property rights of the owner with the rights of the person whose property is being devalued by the nuisance. It allows a fair amount of time for due process. Mrs. Segal-George said you also have to factor in some time because we have so many out-of-town owners and issues must be resolved through property managers. Mayor Cereceda asked if this will be enforced and solve the problem, or if it is just going to give people false hope. She also asked if trash stored under a piling home could be considered a nuisance. Mr. Roosa said that within the confines of the structure of the house (underneath the pilings) this ordinance will not apply, because they have not abandoned the property. If they put the same thing out in their yard, it could be considered a nuisance. This is intended for yards and vacant lots only. Mayor Cereceda said that unfortunately the beach is different because so many houses are on stilts and it is not the same as storing stuff in an enclosed garage. Mr. Roosa said if you want to cover that issue, you could address screening. It was agreed that the other problem is that there are different ideas of what is trash and treasure. Mr. Reynolds also mentioned parking RVs and boats, which may be very expensive items, but are unsightly in the yard. Mr. Roosa said they are not covered. Mrs. Segal-George clarified that the mayor's letter is only regarding the assessment after the homeowner has

failed to respond and after it is directed by the council at the hearing. Prior to that time, Town staff handles the complaint.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the ordinance be adopted. The roll-call vote was as follows: Mr. Isler, aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The motion passed unanimously.

The council took a break at 8:10 PM and reconvened at 8:25 PM.

XIII PUBLIC HEARING: BODY PIERCING ORDINANCE

Mayor Cereceda read the titles and opened the public hearing.

A CHARLES IVERY

Mr. Ivery asked how the ordinance would be enforced. He also reminded the council that the ordinances have failed in other cities and in the state for the reasons he cited earlier.

Mr. Isler said he has two daughters, ages 15 and 9, and when his wife and daughter went to get their ears pierced, he was against it. So he is not advocating body piercing, but he does not want the town or anyone else saying whether they can get it done. He thinks it is misnamed as a health and safety ordinance. Mr. Reynolds said it will offer a little bit of protection for people who are not old enough to make these decisions themselves. We have a lot of young people coming here in groups and doing things their parents won't approve of and may not know about for a long time. Regarding the girl who is 17 and has a child, if they have a way of indicating they are married, they are no longer under the control of the parents and they should be able to choose for themselves. Mr. Roosa said that if you are married, you are no longer a minor. If they can establish that they are married, it is no longer an issue.

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

XIV PUBLIC HEARING: REFERENDUM QUESTION ON 3% UTILITY TAX ORDINANCE

Mayor Cereceda read the titles and opened the public hearing.

A DAN SAX

Mr. Sax asked if this question has ever been put to the public before. He thinks it is ridiculous to put this on the ballot because no one wants to pay more taxes and it is a waste of time to put it on the ballot.

B RAY MERTENS

Mr. Mertens said he is in favor of the 3% tax, but he wondered if there was more information on how it will impact business owners so it will be fair to them. Will it be a sliding scale? He will be less than apt to vote yes if he has to pay 3% on his \$14,000 electric bill.

The public hearing was closed.

Mr. Reynolds said he is opposed to any increase in taxes in any form because he does not believe we need the money. If the voters pass the referendum because they want the money for a specific reason, then that is OK, but it should be up to the voters. Mr. Isler said many people say they want more parks, etc and it is not clear that it will fail. History on the county level and state level say that it might pass.

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

XV FIRST READING: TOWING ORDINANCE

Mayor Cereceda read the titles. The public hearing was set for September 22. Mr. Murphy asked where the prices came from and Mrs. Segal-George answered that mostly they came from the Miami and Panama City ordinances. Mayor Cereceda thanked Mr. Dillon for all the work he did on the regulations, and asked if he would mind meeting with a group of tow company owners to iron out some details. Mr. Reynolds said he thought it was too late to send it back for more work since this is already the first hearing and it would delay things. He thought the towers have already been heard from. Mr. Murphy said he thought it was a good idea because we have a history of having people give input on our ordinances if it affects their businesses, and he does not think it will delay things. Mr. Roosa explained that it is a two-step

process. The ordinance allows the Town to set the rates. It then allows them to adopt a resolution establishing the rates. He thinks the mayor's idea is a good one. There may be some unique circumstances to our island that they will have information on. It is consistent with the ordinance to ask for their input. Mr. Isler said one of the key issues is that the \$80 posted charge becomes \$120, which makes it feel unreasonable. He asked Mr. Dillon if his research on after-hours charges shows that \$40 is a normal charge. He replied yes, but not in all communities. He also said the state says the first six hours must be free and after that they don't address how much you can charge. Mr. Isler said he could understand not accepting checks because it is easy to stop payment, but he thinks they should have to accept credit cards. It was stated that credit cards can be stopped too. Mr. Dillon said there is a difference between a Mom and Pop operation where someone just has to come downstairs to release a car, and paying an overtime employee to come out in the middle of the night. Mr. Isler asked if "normal business hours" on the beach could be stipulated as 6 PM to 1 AM. The towers are working during those hours anyway, and they aren't being dragged out of bed to let people get their cars during those hours. Mr. Reynolds asked about travel time and waiting time and hoped they could be eliminated because that probably has to do with accidents. He suggested changing the outside storage rates to 24 hours free rather than 6 hours, because tourists may have trouble getting there in that time.

XVI FIRST READING: ORDINANCE TO ESTABLISH AND LEVY AD VALOREM TAXES

Mayor Cereceda read the titles. The ordinance was set for public hearing on September 22.

XVII TOWN APPOINTMENTS TO THE MARINE RESOURCES TASK FORCE

Mrs. Segal-George said that at the last council meeting the formation of the task force was finalized. These are the 12 people who would like to serve. Mr. Roosa said that according to the ordinance, they need to be appointed for staggered terms. Mr. Isler suggested they be appointed for two year terms instead. Mr. Roosa said the ordinance will have to be amended to allow 12 members and to change it from being staggered terms.

XVIII NEW BUSINESS

A INTERLOCAL AGREEMENT ON STREET MAINTENANCE

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the interlocal agreement be signed. The motion passed unanimously.

B INTERLOCAL AGREEMENT ON COMMUNITY DEVELOPMENT

Mrs. Segal-George said that this is the same agreement as last year except for a 3% increase, and it will now include a full-time code inspector.

Motion: Mr. Reynolds moved and Mr. Reynolds seconded that the interlocal agreement be signed. The motion passed unanimously.

C FPL SERVICE AGREEMENT

Mrs. Segal-George said this agreement is needed in order to take over the street lighting district. She noted that there is no additional cost to the town, even though the county is charging 30% more this year.

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

D REQUEST FOR UNDERGROUNDING OF UTILITIES ON OLD SAN CARLOS

Mrs. Segal-George said the undergrounding of utilities would be paid by the property owners through an assessment district, but the town would need to pay about \$2500 to get the study done.

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

XIX TOWN MANAGER'S ITEMS AND REPORTS

A CABLE UPDATE

Mrs. Segal-George said that originally the county had told the Town that we were tied with the county until 2000. Then the county told us we were on our own, but the cable company says the county has never cut us loose officially. We will continue to get paid by the county this year, but we are moving forward in making our own cable agreement.

B OTHER ITEMS

She gave an update on the Long estate property. The estate is pursuing eviction of the person who is occupying the land. It is the Town's understanding that the person is holding a fraudulent deed.

She has been notified that La Playa is proceeding with plans for a parking garage on the La Playa site (and possibly the Pizza Hut site) that will hold 300-400 cars. It will have to come to the Council for approval.

XX TOWN ATTORNEY'S ITEMS

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

XXI PUBLIC COMMENT

A RAY TROZZO

Mr. Trozzo spoke about towing. It is symptomatic of a parking problem. We have lost one of our small dirt lots and are probably going to lose two more. We are growing at such a rate that we need more parking.

B RON ANDERSON

Mr. Anderson said this ordinance would also affect police tows and private tows. It is a bandaid, which will not fix the problem. He thinks we need to go back to the county ordinance. The real problem is the parking problem.

C DAN SAX

Mr. Sax said that on towing you are talking about two different kinds of tows. There is "towing for ransom" off of parking lots, which is different from a person whose car breaks down and they call the tower. The Council needs to look at how much they negotiate with the towing company owners. It is more important to look at what is good for the town and what is common in the state, not what is good for the towers. \$60 is reasonable, \$120 is not. \$8-10 dollars for storage per day is reasonable for this area. Regarding the body piercing ordinance, he is afraid we are going to spend a lot of time in court.

D TOM GLEN

Mr. Glen is concerned about the units that have been moved onto Connecticut Street. He thinks it is poor planning to allow them to be brought in. Connecticut Street is a beautiful residential street, but these are only 7.5' apart and 7.5' from a neighbor's pool. Mrs. Segal-George said that the lot is zoned duplex so it was allowed. She said everything was done appropriately and that they complied with the current setbacks. It is part of the code that we inherited from the county.

E MARIANNI FOX

Ms. Fox thanked the Council for the opportunity to have input in the meeting.

XXII ADJOURNMENT

The meeting was adjourned at 9:48 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary