

**FORT MYERS BEACH
TOWN COUNCIL MEETING
NOVEMBER 3, 1997**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, November 3, 1997 at 6:30 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

Father Raymond Kress of St. Raphael's Episcopal Church led the Council in prayer.

Mayor Cereceda asked the indulgence of the Council and the public so that she could make a special announcement. She said that Wal-Mart has just selected Vice-Mayor FitzSimons as an American Hometown Leader. She read the nomination application that she had submitted for Mr. FitzSimons several months ago. He was one of five winners, and was chosen for leaders of towns of 25,000 or less. The Town has been awarded \$1000.

IV PUBLIC COMMENT ON AGENDA ITEMS

There were no comments.

V APPROVAL OF MINUTES: OCTOBER 20, 1997 AND OCTOBER 21, 1997

Mr. Reynolds said that on page 3 of the October 21 minutes, he wanted to clarified that he was talking about the 3-year indebtedness.

On page 1, he clarified that he talked with Martha instead of Mr. Judah.

Motion: Mr. Reynolds moved and Mr. Isler seconded that the minutes be accepted as amended. The motion passed unanimously.

VI PROCLAMATION ON NATIONAL EPILEPSY AWARENESS MONTH

Mayor Cereceda read the proclamation naming November as National Epilepsy Awareness Month.

VII PRESENTATION ON MSTU/MSBU BY PEGGY FRESHOUR

Ms. Freshour handed out a report. She explained that municipal service taxing and benefit units are popular in government now because of downsizing and core level of service. Governments have a 10 mil limit that you can't exceed. Taxpayers tell you they don't want more taxes but they want more services. You can set up a specifically defined area (which can be as large as the whole island or as small as a few blocks) where you can have an additional 10 mil cap for a tax, or an assessment (which is not covered by the cap but must not be higher than the property value.) Once you levy an assessment you have a lien on the property. There are three ways to build an MSTU or MSBU. You can build them yourself; you can have the tax collector collect them for you and he will charge a fee and bill the landowner once (but will not follow up to see if it is paid); or you can have a non ad valorem assessment put on the tax bill (but this costs more and involves a lot of paperwork.) The difference between the tax and assessment depends on what you are doing and what the price is. The problem with a taxing unit on the beach is that there is a big variance in value between properties right next to each other so there can be an inequity. An assessment is different because you have to prove a benefit. You create an MSTU or MSBU by ordinance. She recommended that you put everything possible in the enabling ordinance, then you just need a resolution to assess and budget the money. If you pass the enabling ordinance but never pass the

resolution, the money will never be collected. On an assessment you must notify everyone, publish notices, and have two public meetings. An advisory committee would make a recommendation and tell you how much they want to spend, then the Town budgets it. When people see where their money is going and they have control over it, they are willing to pay the taxes. The most urgent need in the Town is for an MSTU/BU for maintenance of the paver area in Times Square. There are 247 parcels in the area broken down into Dept of Revenue codes. The taxable value of the area (95%) is \$19,633,546 which would bring in \$19,634 if you only assess one mill. The council can set this up and make it mandatory, or you can have people petition the council. If you want to go on to a phase II or phase III, they would more likely be by petition. The advisory committee will be appointed by the council and will be bound by the sunshine laws. She recommends a mandatory assessment (more equitable by front footage or acreage, etc.) in the core area. Mrs. Segal-George said you can have multiple assessments, for maintenance and for improvements, for example. Improvements could include underground utilities, upgraded lighting system, construction, sidewalks, stormwater system, landscaping, streetscaping, street furniture, etc. She said she would like the council to direct Mr. Roosa to prepare the enabling ordinance. The next step would be to work with Ms. Freshour to set up the mandatory MSBU for the core area. Ms. Freshour said the advisory committee would be made up of property owners in the affected area. She recommends no more than five people on the committee. You can set the percentage of property owners that must petition for an MSBU (she recommends about 51% of owners), then hold public hearings and the council makes the decision whether to enact the assessment.

Motion : Mr. Murphy moved and Mr. FitzSimons seconded that Mr. Roosa be instructed to prepare the enabling ordinance and the Town Manager to pursue the mandatory MSBU in the Times Square area. **Discussion:** Mayor Cereceda said there were going to be a lot of people in the affected area who still see the Times Square project as a hardship, not a benefit. She suggested we have a workshop with the affected property owners to explain the purpose and plan for the MSTU/BU. It was clarified that the table permits are for the use of the Town's right-of-way, and it has nothing to do with the maintenance of the area. Right now the maintenance of the area is being paid for by the whole town. It is possible that the owners in the core area might be assessed for part of the maintenance and the residents of the Town still pay some. Mr. Reynolds agreed that the owners should be talked with before making a mandatory assessment. **Action:** The motion passed unanimously.

VIII UPDATE ON TURTLE NESTING SEASON BY EVE HAVERFIELD

Ms. Haverfield, of Turtle Time, said she has finished her 19th year monitoring sea turtles in Lee County and her 9th on FMB. On FMB, this was the best year ever. Even though there were fewer nests, they had more hatchlings. They had 28 nests with almost 2300 hatchlings. (When she started in 1989, there were only 5 nests on the beach.) The peak area was zone 4 (Connecticut to Caper Beach Club) with 11 nests. Usually the peak area is in Zone 5 (Connecticut to Strandview), but this year they only had 2 nests. Zone 4 is a pretty natural area with dunes, not too many tractors, the sand is not compact, and lights are well shielded. The other concentrated area was Little Estero Island, which is a natural area. There were 42 false crawls in zone 8 (from Flamingo to the Holiday Inn). The sand is too compact. There were a total of 68 false crawls, which is too many for a island this size. They had some disorientations but they also had a lot of volunteers helping correct the disorientation. They had one nest where two preteen girls broke into a nest and stole some eggs. In Florida, there have been 792 dead turtles since January, 212 on west coast. Lee County has most on the west coast (48), but she is not sure why. Most of the injuries she sees are boat impacts. Sometimes fish hooks have perforated the lung, some have died from a type of cancer. She thanked the council for their interest and support. When the Town goes for renourishment, the federal and state officials will ask her what our commitment is toward turtles. She also thanked Mr. Isler for his help in getting the nests on satellite tracking.

IX COUNCIL MEMBER 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 RAY MURPHY

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

C GARR REYNOLDS.

Mr. Reynolds passed out a memo thanking Mrs. Segal-George for her letter responding to his questions.

Regarding the memorandum on Eckerds and the testimony on traffic calming, he felt the testimony was so insignificant that he didn't pay any attention to it. He thinks most people are happy with the Eckerds decision anyone.

He also asked Mr. Roosa about the memo regarding e-mail and asked him for further clarification. Mr. Roosa said the public records law requires that the sender of e-mail make a copy available as a public record. What he does, just for convenience, is put it on a disk. At the end of the year he will bring the disk to Town Hall. When you send e-mail, it is on your hard drive, so you can copy from the hard drive if you want to bring it current. The attorney general has come out with an opinion that it is required.

He asked if anything more had been heard about the tennis courts on Lenell. The answer was no.

D MAYOR CERECEDA

Mayor Cereceda said \$2500 has been received as a donation for holiday decorations along Estero Boulevard. She asked the Town to match those funds so we can have more decorations further down the boulevard. Mr. Isler asked about storage. She said the reindeer are stored in various places (merchants' storerooms) and the wreaths and banners are being stored by Semmer Electric. She would like to eventually have the whole boulevard decorated, but for now it would start at Times Square where there are already decorations and work south. Mr. Isler suggested encouraging the business owners to purchase their own decorations instead of the Town. She said she is asking for this money only for decorations to hang on the light poles on Estero, not in front of businesses. Merchants will buy their own decorations.

Motion: Mr. Reynolds moved and Mr. FitzSimons seconded that the Town match the donated funds. The motion passed unanimously.

Mayor Cereceda announced that she needed to leave the meeting early and would turn the meeting over Vice-Mayor FitzSimons. But she asked if they could do item 16 first. The Council agreed to move that item forward in the agenda.

X NEW BUSINESS: COUNCIL REORGANIZATION

According to the charter, the mayor and vice-mayor are supposed to be chosen at the first meeting after the election. However, there will only be four council members present at that meeting, and there will be one or two newly-elected members not seated yet. Mr. Roosa said the charter has an ambiguity because it says the council will reorganize at the first meeting after the election (November), but it also says new members will be seated at the first meeting in January. That would deprive the new members of a voice in organizing the council. Most governments reorganize after the new council is seated. Mr. Reynolds said he felt that new members should have the opportunity to elect new officers and that the council should reorganize in January. The Council agreed that between the two ambiguities, it seemed that it was fairer to interpret "the first meeting after the election" to mean the first meeting after the new council is seated. They decided to make it a council policy to elect officers on the first regular meeting in January, even on non-election years (to keep it consistent). The new candidates can be sworn in by a judge, a notary public, or an attorney of their choosing.

The council took a break at 8:05 PM and reconvened at 8:15 PM. After the break, Mayor Cereceda was absent and Vice-Mayor FitzSimons chaired the meeting.

XI FIRST READING OF ORDINANCE AMENDING THE VESSEL CONTROL AND WATER SAFETY ORDINANCE

Vice-Mayor FitzSimons read the titles. It was set for public hearing on November 17 at 6:30 PM. Mr. Roosa explained that the county has taken the position that there is no longer a county owned channel. It is their opinion that the Town owns the channel now. Mrs. Segal-George said Steve Boutelle is still willing to offer the same core level service regarding maintaining the channel and moving buoys, etc., but

not until we change the ordinance. Mr. Isler said there should have to be a public hearing before buoys are moved because it takes away boaters' rights. Mrs. Segal-George said she would be willing to bring it up to the MRTF for a recommendation.

XII RESOLUTION SETTING MEMBERSHIP OF THE MARINE RESOURCES TASK FORCE

Motion: Mr. Murphy moved and Mr. Isler seconded that the resolution be accepted. **Discussion:** Mr. Reynolds felt that since the number has been set by ordinance at no fewer than 9 members, but we are appointing 13, that there should be a maximum figure so it doesn't get too big. Mr. Roosa said that this is simply implementing the ordinance and naming the members. Changing the number would have to be an ordinance amendment. **Action:** The motion passed unanimously.

XIII RESOLUTION IN SUPPORT OF ESTERO BAY BUFFER LANDS IN THE CARL PROGRAM

Mrs. Segal-George said there are two meetings of the CARL committee coming up and the MRTF will have representatives at those meetings. This resolution will hopefully show them again how strongly the Town supports the purchase of these lands.

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

XIV REQUEST TO ALLOW COUNCILMAN REYNOLDS TO ATTEND THE LEGISLATIVE CONFERENCE IN ORLANDO NOVEMBER 20-21

Mr. Reynolds said he has been asked to serve on the legislative committee of the Florida League of Cities.

Motion: Mr. Isler moved and Mr. Murphy seconded that it be approved that Mr. Reynolds attend the conference. The motion passed unanimously.

XV OLD BUSINESS

A REQUEST FOR FUNDING FOR SOUND SYSTEM FOR BAY OAKS

Mrs. Segal-George said that Mr. Isler suggested at the last meeting that the Town split the cost of the sound system with the county. She talked with Vicky Massey and she believes that if we will provide half of the money, she can get the rest from the county.

Motion: Mr. Reynolds moved and Mr. Murphy seconded that the town provide matching funds with the county for the sound system. The motion passed unanimously.

XVI TOWN APPOINTMENTS

A CITIZENS ADVISORY COMMITTEE OF THE MPO

Mr. Reynolds nominated Dean Southworth, who has been on Sanibel Congestive Pricing Committee and is active in the Kiwanis Club.

Motion: Mr. Reynolds moved and Mr. Murphy seconded that Mr. Southworth be appointed to the Citizens Advisory Committee of the MPO. The motion passed unanimously.

B BAY OAKS ADVISORY COMMITTEE

Motion: Mr. Murphy moved and Mr. Isler seconded that Bill Thompson be appointed to the Bay Oaks Advisory Committee. The motion passed unanimously.

XVII TOWN MANAGER'S ITEMS AND REPORTS

A AUTHORIZATION TO HIRE A SURVEYOR AND A SECOND APPRAISER FOR THE MOUND HOUSE

Mrs. Segal-George said that these are requirements of Florida Community Trust and that the Town will be reimbursed by the Trust. She is only allowed to hire someone from their list. The first appraisal

cost \$15,000 and she assumes this second one will cost about the same. She does not know how much the survey will cost. (The first appraisal will be reimbursable too.) The Trust will also offer a review appraisal.

Motion: Mr. Murphy moved and Mr. Isler seconded that the Town Manager be authorized to hire a surveyor and a second appraiser. The motion passed unanimously.

Mrs. Segal-George said that she and Bill Spikowski have been looking at the overlay ordinance and discovered some glitches that need to be changed. She wanted to make the council aware of one glitch. It deals with Old San Carlos, and makes parking garages and parking lots a use by right without public hearing. She wants to change it so that you will have to have a public hearing for a parking lot or garage. She will be bringing regulations forward to try to cure that problem.

Mr. Gucciardo said as of October 1, the FMB street lighting district has been dissolved and the town has taken over. He has asked Julia Campbell to help by placing an ad so we can develop another citizens advisory committee to take a look at requests for additional street lights or repairs. Mr. Isler asked what was going to happen with the traffic signal during season. Mr. Gucciardo said that in season the pedestrian-activated light will be deactivated and pedestrian crossings will be controlled by VOICE volunteers.

He also reported that the MRTF has been working with DEP regarding raking permits on the beach. DEP has agreed to modify their process to include input from the Council. The council will receive the request and turn it over to the MRTF for recommendation and review. The MRTF is already preparing a beach raking ordinance to bring before the council.

Mr. Reynolds said that he remembered something that he wanted to bring up. He stated that he is being sued by a jet ski operator near where he lives. He clarified that he is being sued as a private citizen not as a councilman. Because of that, the Town's insurance with the FLC is of no use to him.

XVIII TOWN ATTORNEY'S ITEMS

Mr. Roosa said that two ordinances have been passed out to the council. One is to levy ad valorem taxes and the other is a budget ordinance. He explained that in the ordinance we already adopted in September, we had deducted the amount the tax collector charges the Town, since we don't see that money anyway. The state Dept. of Revenue has told the Town we must readopt the ordinance showing the full amount of ad valorem. Mr. FitzSimons read the titles of the ordinance of the ad valorem ordinance. It was set for public hearing on November 17. He then read the titles of the ordinance adopting the budget. It was set for public hearing on November 17.

Mr. Roosa said there was a hearing on the writ for certiorari on the Bogdanski case this afternoon. We should be receiving the ruling from the judge before the next council meeting.

XIX PUBLIC COMMENT

A LEE CONGER

Mrs. Conger lives on Connecticut Street. About ten days ago, at the end of Connecticut where her family has always fished and hung out as a family, large signs appeared that say "no parking", "no fishing" and "no trespassing." The neighbors are upset and wondered how those signs could go up so arbitrarily. She has no problem with the no-parking sign, or perhaps a no-littering sign. But it is a public access. She has a petition asking that the signs for no fishing and no trespassing be removed at once, and any new signage only be allowed after public input. Mr. FitzSimons said someone from staff would get back with her.

B JOHN MULHOLLAND

Mr. Mulholland applauded the council for the action to move the reorganization to January so the new council member or members, whoever they may be, can be part of the election.

He said he was in the bay yesterday and the buoy in question has been moved about 150 yards which has reduced the idle speed zone. He thinks the county is using the movable buoys because of cost considerations. He doesn't think you'll see the pilings any more because of the cost.

XX ADJOURNMENT

Motion: Mr. Murphy moved and Mr. Isler seconded that the meeting be adjourned. The meeting adjourned at 9:07 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary