

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
NOVEMBER 17, 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 17, 1997 at 6:30 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Ray Murphy and Garr Reynolds; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; Assistant Town Manager Terry Dillon; and Town Attorney Richard Roosa.  
Excused from the meeting: Council Member Rusty Isler

**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 Dick Tafel of The New Church.

**IV PUBLIC COMMENT ON AGENDA ITEMS**

**A DON DEANE**

Mr. Deane spoke about taxis. It is nice to have your windows open in good weather, but it is difficult when there is a taxi service operating out of a home on your street and taxis going up and down the street all day and night. He does not have anything against the taxi service, except he does not think they should be able to operate out of a residential area. He feels that they should be in a commercial area. He asked the council to consider a change.

**B MICHAEL REEVES**

Mr. Reeves, general manager of Europa Sea Kruz, said that although he is a competitor of the new boat, he is here to talk about fair business practices. It took him 18 months to get the permitting and development order. Impact fees were in excess of \$10,000. He spent over \$100,000 to ensure he was in compliance with parking requirements. He had to go through many state and federal agencies as well as county agencies. Even the governor and cabinet had to approve that the submerged land lease covered not only under the dock but also the boat. There is something wrong when a new boat can come in and start operating within a week.

**C MICHAEL KETCHMARK**

Mr. Ketchmark, manager of Marina Village's Snug Harbor Condominium Association, spoke on behalf of the owners and board of directors of the association. Their condominium is located next to the new cruise ship and Moss Marine is using the access that goes between their picnic and playground area and their parking area as the access to the boat. They are concerned with the safety of their residents and children. It is not a highway and they have about a dozen children in residence. They are also concerned with the congestion and noise and protecting their parking spaces. It will be difficult to control who parks in their parking places.

**D ARTHUR WELLS**

Mr. Wells is an owner at Marina Village at Snug Year. He enjoys bringing his grandchildren with him when he comes. He is concerned about the traffic going through the parking lot. Traffic makes a turn off the road and into the parking lot at 10 or 15 mph, which is too fast when small children are around. He hopes the council will require Moss Marine to do something about the dangerous situation through the parking lot.

**E BUNNY CLAYTON**

Ms. Clayton lives on Third Street. She has fought with Moss Marine for years about the access. She lives in an area of single family homes and they don't want the traffic. Mr. Freeland doesn't live on the beach and it is unfair that people who don't live on the beach control what happens on the beach.

**F JOHN COLEMAN**

Mr. Coleman, an attorney in Fort Myers, spoke for Louis Hannum, owner of Local Motion. Mr. Hannum has had the business for many years and has had to meet many regulations in order

to operate his business. Many new people have come in recently, they put a magnetic sign on their car and start picking up fares. He only desires a level playing field with the new taxi companies. Who knows if these companies have insurance, occupational licenses, have met the fictitious name requirements, etc. The safety of the public needs to be protected. They have attempted to communicate with the sheriff's department since September and they have gotten nowhere. He hopes the council will address the problem.

**G ED CUSICK**

He and Rich Hendricks own Snug Harbor where Sea Kruz docks. He is pro business as long as it is done fairly. But this affects his customers' convenience and safety. Snug Harbor is located in an unusual location and it is a congested and dangerous area. He shares the fear about the condos and the children, but he also fears for himself and his employees.

**V APPROVAL OF MINUTES FROM OCTOBER 21 AND NOVEMBER 3**

Mr. Reynolds mentioned two items for clarification. Regarding the minutes of November 3, he said that not only is he not covered by FLC insurance, but that the other council members are not covered unless they are named in a suit as a council member, not as a private citizen. Regarding the minutes of October 21, he wanted to clarify that the last sentence under Ms. Haverfield's comments should still be attributed to Ms. Haverfield.

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

**VI RESOLUTION CERTIFYING THE RESULTS OF THE ELECTION**

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

**VII REVIEW OF FINANCIAL REPORTS FOR OCTOBER**

Mr. Reynolds asked for explanation about a number of items.

**VIII COUNCIL MEMBER ITEMS AND REPORTS**

**A TED FITZSIMONS**

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

**B GARR REYNOLDS**

Mr. Reynolds thanked the town for having the grass cut at the Sanbar Motel.

He reported that at the Chamber traffic meeting, it was reported that the county has striped San Carlos and it has helped. They are still going to contact FDOT about the flex sticks.

He asked Mr. Roosa to comment on the Bogdanski case. Mr. Roosa said the court has not ruled yet.

**C RAY MURPHY**

Mr. Murphy said it has been brought to his attention that we only run the legal notices of the meetings in the NewPress. He asked if we can advertise in the Beach Observer which is more local and would cost less. Ms. Cereceda said we could use the Observer, but we cannot use them as our primary advertiser. The staff will check into the cost of running ads in the Observer also.

**D ANITA CERECEDA**

Mayor Cereceda said that there will be a ceremony honoring Vice Mayor FitzSimons for the American Hometown Leadership Award. It will be at WalMart on Thursday at 9 AM. She invited everyone to attend.

She said that Mr. Brown, who owns the Parkside Café, has a notice posted on the window of his business that says that because of Mayor Cereceda he can no longer have his tables out on Time Square and he can't make a living and his bands can't eat or drink. She said that Mr. Brown has had loud music that has taken over the Square and that she had reported it. She reported this to the Council for information only.

**IX EXPRESSION OF THANKS FROM CONNECTICUT STREET**

Lee Conger and her son Evan thanked the council for removing the no fishing and no trespassing signs at the end of Connecticut. Evan read a certificate of thanks and presented it to the mayor.

**X PRESENTATION BY HOWARD MARLOWE ABOUT LOBBYIST EFFORTS TOWARD FEDERAL INVOLVEMENT IN BEACH PROJECTS**

Mr. Marlowe stated that he is a lobbyist retained by the county to assist in pursuing federal funds for renourishment on Estero and Gasparillo and also for dredging. He is also president of the American Coastal Coalition, an organization of communities and business leaders who are affected by coastal issues. They have been able to get the Shore Protection Act passed, which was signed by the president in October, for the federal government to remain involved in the preservation of sandy beaches. In 1995 when the president announced that he wanted to get out of using federal money for shore protection, the government was spending about \$45 million a year. In 1996, \$102 million was authorized, and in 1997/8 it has increased further. This shows that Congress wants to fund these projects even though the president has spoken against it. The Corps of Engineers was doing a reevaluation report on Estero Island and stopped about the time the president made his stand. Now the study will go on, and then the project will be reauthorized. He thinks the earliest that can happen is 1998, but it is more likely in the year 2000. Then we can get appropriations for the project. Hopefully we can get sand on the beach by 2001. He is trying to make sure the Corps does not miss the deadlines. He feels we have been mistreated by the Corps. He said that dredge material will only get you so far. It will get you something that looks like a beach but it won't hold long. The community needs to be committed to repairing the beach and keeping constantly after the Corps to get the job done. A beach project is forever, even though it will need to be renourished every 6 to 8 years. The federal government will remain involved even for the renourishment. The question is will it be soon enough. He thinks we can get 65% of funds from the federal government, and it might go higher for mitigation caused by the federal channel.

**XI PUBLIC HEARING: ORDINANCE ADOPTING THE MILLAGE RATE**

Mayor Cereceda read the titles. The public hearing was opened. There being no comment the public hearing was closed. She explained that this is the same ordinance that was passed in September, but that the Town made a mistake by adopting the budget first, and the state requires them to adopt the millage first.

**Motion:** Mr. Murphy moved and Mr. Reynolds seconded that the ordinance be accepted. The vote was as follows: Mr. FitzSimons, aye; Mr. Murphy, aye; Mr. Reynolds, aye; Mayor Cereceda, aye. The motion passed unanimously.

**XII PUBLIC HEARING: ORDINANCE ADOPTING THE 1998 BUDGET**

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

**Motion:** Mr. Murphy moved and Mr. FitzSimons seconded that the ordinance be adopted.

**Discussion:** Mr. Gucciardo explained that the tax collector takes about 2.5% out of the ad valorem taxes as a fee before the money is remitted to the town. The staff took that fee out when they figured the amount of ad valorem that the Town would receive. The state told us that we must budget the whole amount, and then take out the fee as an expense item. Other than that adjustment, the budget is exactly the same as the budget passed in September. **Action:** The vote was as follows: Mr. FitzSimons, aye; Mr. Murphy, aye; Mr. Reynolds, aye; Mayor Cereceda, aye. The motion passed unanimously.

**XIII PUBLIC HEARING; ORDINANCE AMENDING THE VESSEL CONTROL AND WATER SAFETY ORDINANCE**

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

**A DAVID RICHARDSON**

Mr. Richardson asked whether this ordinance included submerged land. Mayor Cereceda said that the town controls 1000 feet around the island. Mr. Roosa said the state allows the town to control the water around the island but it does not affect the federal channels.

The public hearing was closed.

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

**XIV FIRST READING: ORDINANCE TO AMEND THE LAND DEVELOPMENT CODE**

Mayor Cereceda read the titles. The first public hearing will be set for December 1 at 6:30 PM and the second public hearing will be set for December 15 at 3:00 PM. She explained that the LPA had already discussed and passed these changes in a resolution.

The council took a break at 7:45 and reconvened at 7:55 PM.

**XV DRAFT DISCUSSION : ORDINANCE AUTHORIZING THE FORMATION OF NEIGHBORHOOD IMPROVEMENT MAINTENANCE DISTRICTS**

Mr. Roosa said that he attached the state statute that allows these districts to be formed. Then he added a memo about maintenance and addressed improvements and revenue bonds. Then he included a draft ordinance. Mayor Cereceda suggested leaving it in draft form until the workshop is scheduled.

**XVI DISCUSSION OF OFFICE SPACE**

Mr. Dillon said the memo outlines two options. There is a blueprint of option one, to remodel this floor. The price for both floors would result in a monthly rental of \$2329. Option two would be to take the space downstairs and create a council chambers downstairs. It would take very little renovation. It would also provide storage. It would allow for a raised dais and the sound equipment could be installed. It is staff's recommendation that we go with option two. If we go with option two, it would also allow space for county staff, sheriff's deputies, etc., and for a second conference room. Harold Huber did some research and said that the going rate on the beach is about \$6 per square foot. We would be getting the space for \$5.30, which includes electricity. Mr. FitzSimons said he feels it is one of the most secure buildings on the island. Mayor Cereceda said she spends a lot of time here and she feels the need for more space.

**Motion:** Mayor Cereceda moved and Mr. Murphy seconded that option two be accepted. Mr. Reynolds said the extra space is not needed. He knows we will fill it, but it is not needed. He feels there should only have been two employees plus contractors. He said he is in and out all the time and he does not see the need for more room. Mayor Cereceda said it is true that at some times there are not many people here, but at other times the place is packed. The employees have been saying that they need more space. She is here about 30 hours per week and she sees the need. **Action:** Mayor Cereceda, Mr. Murphy and Mr. FitzSimons voted for the motion. Mr. Reynolds was opposed. The motion carried.

**XVII UPDATE ON TRASH REMOVAL IN TIMES SQUARE**

Mr. Dillon stated that there has been a constant problem with trash in Times Square. The plan is that the dollar amounts that he mentions will be later transferred to the MSTU. Some of the merchants have curbside pickup, and some have dumpsters (which are on county property and need to be moved.) There are also some who have property large enough to have their own leased dumpster, and they are not included in this discussion. He is proposing we relocate the dumpsters under the bridge. Our maintenance person will transport garbage to the dumpster where Kimmons will pick it up. The Town will need vehicles. We have the use of an old golf cart now, but we would need a second vehicle so that there will always be a vehicle in working order. He has tested a Kawasaki for \$6900 under state contract. He has also heard that we can get a golf cart (designed for carrying maintenance loads on a golf course) for \$5380. Either would have to be retrofitted for a hydraulic lift and a bin. He would like to look at the golf cart (it is aluminum and might not rust as bad) and if he likes it, he would go out for bid on it. We would have to amend Mr. Lawler's contract. Mr. Reynolds asked why we are getting into the garbage business. Most towns don't move people's garbage. He asked if we had considered having the maintenance person use and maintain his own vehicle. Mr. Murphy suggested that Mr. Dillon come back with the extra cost of having the maintenance person pick up the garbage. Mr. Gucciardo said he feels that the merchants in the area have been very patient with all the changes there. We need to move the dumpsters away from the prime tourist area and into an area that doesn't impact our visitors. The county also wants to move their dumpsters to a less obvious area. The next step would be to put together a taxing district to pay for the cost. Mr. Reynolds said he feels we can find a place to put the dumpsters and screen them. Mayor Cereceda said when the council decided to close the road, there was no longer a way for garbage trucks to access the dumpsters that the merchants always used before. Now there is no place for five restaurants to

put that much garbage. Something has to be done, and it is not because of something the merchants did. Mr. FitzSimons said that the CRA project was a way to improve a blighted area that needed help. The purpose was to give them a start, and he feels that they have benefited significantly. But he doesn't think this nurturing should be extended indefinitely. Those who benefit are those who should pay. It is important to keep the area clean, but it should be a function of those who work and operate there. He suggested we get an MSTU together as soon as possible. Mr. Murphy suggested that this be tabled. Mr. Gucciardo said that the MSTU takes a while to get together, and he suggested that at the December meeting the council consider some funding until an MSTU could be put in place. He said the county wants the dumpsters moved now. Mr. Reynolds said perhaps we should spend a little money to keep the area clean, but he doesn't want to see it be a long-term project. He would like Mr. Dillon to get figures on how much it will cost in the short-term. It was agreed that it will be brought back at the next meeting and also at the workshop on MSTU.

## **XVIII NEW BUSINESS**

### **A SISTER CITY PROGRAM**

Ms. Segal-George said that it costs \$200 annually to join the program, and then the Town can see whether the program would be beneficial for the Town. All the other cities in the area have a sister city, even Bonita Springs, which is not even a city.

**Motion:** Mr. FitzSimons moved and Mr. Reynolds seconded that the Town join the Sister City program. The motion passed unanimously.

### **B CURRENT TAXI REGULATION ENFORCEMENT**

Mr. Gucciardo said recently there have been complaints about taxis, from owners and from residents. He recommends getting a handle on what regulations are out there and if they are being enforced. We may have to look into a town ordinance like the towing ordinance. If it can be determined that there are adequate regulations and they are being enforced, we can drop the town ordinance. There seems to be some question about whether a taxi can operate out of a residence. He has heard that some people are driving taxis who have lost their license for DWI. The Council agreed that the staff should go forward.

### **C LIBERTY I GAMBLING BOAT DOCKED AT MOSS MARINA**

Ms. Segal-George said she has been working on this issue for a week. She has been on site and talked with the owner and toured the boat. The fire control district has questions regarding parking cars in boat storage barns, and Mr. Spikowski is checking on whether this is a DRI (Development of Regional Impact). Mr. Crabtree delivered a notice of code violation on Friday. The Dept of Environmental Protection has questions on their submerged land lease, the state has an issue regarding the liquor license, and the U. S. Attorney's office and U. S. Customs are questioning a U.S. registered gaming boat in U.S. waters. The owner does not believe he needs a separate occupational license, but there is a question about whether there has been a change of use because of parking of cars in boat storage, and whether this has changed from a marina to a port, requiring rezoning. The Town has never received anything from the owner including a traffic study, parking plan, etc. She asked the council to consider asking Mr. Roosa to pursue this in court through injunctive relief. The notice of code violation will go through a hearing examiner process, but that is a lengthy process during which time the boat will be able to operate. Injunctive relief would shut down the boat until the issues are decided. Mayor Cereceda said it is really irritating that someone will come in and do whatever they want without going through due process. Mrs. Segal-George said we also received a letter from the attorney for Moss Marine saying that our code enforcement officer can no longer be on the premises and will be cited for criminal trespass if he goes back again, so we have no way to inspect what is going on. Mr. Roosa said there are two separate issues. This is an operation that has not been properly licensed, and that can be handled through code enforcement, and they can be brought into compliance. But the health, safety and welfare of the citizens is another issue. If the council decides to pursue injunctive relief, he thinks it should be on those issues, not whether their occupational license is correct. Mr. Murphy said this is a real test for us as a new town. He is not anti-business, but business has to be done on a level playing field. It is our duty to take a stand in favor of the town for the health, safety and welfare of our citizens. Another gambling boat on Fort Myers Beach is not the issue and the market will dictate whether we can support another boat. He supported the town

manager's recommendation. Mr. FitzSimons said this type of event had been part of the county for many years, but the town decided that they had had enough of this loose interpretation of the rules. These people opened a business overnight that is going to generate a tremendous amount of traffic that we cannot support. We have to consider the issue of evacuation also. He does not think we can allow anyone to sidestep regulations, and we have to consider the health, safety and welfare of the community. We have to come down hard.

**Motion:** Mr. FitzSimons moved and Mr. Murphy seconded that Mr. Roosa be instructed to go ahead with seeking injunctive relief. **Discussion:** Mr. Reynolds said it is time for enforcement of our rules. If we are not going to enforce the rules, we should get rid of them. You can't go into any other city in the USA and set up a business without following the rules. **Action:** The motion carried unanimously.

**D COMMENT OR SUGGESTION BOXES AT TOWN HALL AND LIBRARY**

Ms. Segal-George said she has received this suggestion. Later it could be expanded at other gathering places. The Council had no problem with the idea.

**XIX TOWN APPOINTMENTS**

**A AGENCY ON BAY MANAGEMENT**

**Motion:** Mr. Murphy moved and Mr. Reynolds seconded that John Mulholland be appointed. The motion passed unanimously.

**XX TOWN MANAGER'S ITEMS AND REPORTS**

Mr. Gucciardo said we are getting a lot of calls about the traffic signal at Times Square. The Sheriff's office has told us that the traffic signal will be turned off and VOICE Volunteers will be on duty as of December 22.

The Town has received a copy of a letter from Gary Price, Sanibel city manager, to Mr. St. Cerny regarding the revolving appointment to the TDC. The appointment by Sanibel has been terminated and the City of Fort Myers is starting their appointment for 1997-2001. The Town of Fort Myers Beach will finally get a vote in 2001 for four years.

**XXI TOWN ATTORNEY'S ITEMS AND REPORTS**

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

**XXII PUBLIC COMMENT**

**A DICK LOUTH**

Mr. Louth stated that he is concerned about the Town's contract with the sheriff's department. He will go over it with Mr. Gucciardo at another time. He thinks it is very vague and open for liability. As a taxpayer he would like to see more in the contract.

**B JOHN MULHOLLAND**

Mr. Mulholland applauded the council for their correct action to protect the citizens and town by seeking injunctive relief.

**XXIII ADJOURNMENT**

Mr. Murphy moved that the meeting be adjourned. The meeting adjourned at 9:11 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary