

FORT MYERS BEACH
SPECIAL MEETING: WORKSHOP
MAY 30, 1996
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The meeting was opened on Thursday, May 30, 1996, at 6:35 P.M. by Anita T. Cereceda, Mayor.

Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted FitzSimons, Vice Mayor and Council Member; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

II. PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III. HISTORICAL PRESERVATION RESOLUTION

Attorney Roosa stated that the provision in the Fort Myers Beach Land Use Code allows for designating sites for historical preservation, and that there is a provision in the town charter that authorizes the council to enforce the Land Use Code. Based upon that provision, in the absence of an historic preservation board, the council can sit as the historic preservation board. Therefore the staff has presented to the Council a designation report which meets the requirements of Land Use Code and have recommended that the town designate this site as having historical significance. The procedure is to determine that there is sufficient basis to hold a hearing, and that after making that determination, to direct the Town Manager to set a hearing where the council will take testimony and make a decision as to whether to designate it as a historical site. Marsha Segal-George added that if the site was so designated, then the owners of the site, depending on what they wanted to do with the site, would have to go to the Council to request a special use permit. Roosa added that the procedure has positive and negative points. The detrimental side is that it would require Council action for any development on the site. The beneficial side is that the owners would be allowed liberal variances in order to preserve the historic nature of the site. Even though this site has already been identified as a site of historical significance since before 1950, the county has never designated it even though it is one of the earliest historical sites in the county. Therefore it is important that the Council act as quickly as possible to let all the parties know the procedure and hold the hearing to see if it is worth saving and designating. Marsha Segal-George recommends July 1, 1996 as the hearing date.

MOTION: Ted FitzSimons moved and Garr Reynolds seconded that the Town Manager be authorized and directed to file the Historic Preservation Designation Report and begin the notification process to hold a hearing regarding designating the property at 289 Connecticut Avenue, Fort Myers Beach, Florida for historic preservation. Unanimous approval.

Discussion: Mayor Cereceda expressed concern that this action might appear sneaky to the public, but it really doesn't change anything. The site has already been identified as having historical and archeological significance, and this motion is only to hold a hearing.

In order to allow Attorney Roosa to leave the meeting early, the Council agreed to change the agenda and discuss policies and procedures before the discussion of budget items.

IV. POLICIES AND PROCEDURES:

Marsha Segal-George asked the Council for guidance on whether the staff should charge for copies of minutes, resolutions, etc. as requested by the public, press, county staff, attorneys, etc. Ray Murphy recommended asking people precisely what they need and only copying if it is deemed necessary, and perhaps only charging for copies over a certain number that would be provided for free. John Gucciardo mentioned there is now a looseleaf binder available to the public that contains copies of all agendas and approved minutes, ordinances and resolutions. This was provided in hopes that if people can come in to review documents freely, they will not need as many personal copies. He expressed reluctance to charge for copies since they are public record, but he felt a need for control in order to prevent abuse. Attorney Roosa noted that Cape Coral charges ten cents per page, and the clerk charges one

dollar per page at the County Courthouse for a record. He stated that any charges to the public must be set by ordinance: per page, more if certified, and a charge for copies of tapes. In addition he stated that fees should be paid first, including postage, because the town has no authority to loan money.

MOTION: Ted FitzSimons moved and Ray Murphy seconded that the Town Attorney be directed to draft an ordinance setting out reasonable fees for copying documents. Unanimous approval.

Discussion: Attorney Roosa recommended not giving out any free copies in order to provide equal services to everyone in the town. Mayor Cereceda stated that she thought ten cents per page would be reasonable and mentioned that the office staff will have to keep a petty cash box in order to make change for the public. It was recommended that the public be encouraged to go through the public files on their own to see what copies they need in order to save the employees from spending too much time on research.

Garr Reynolds had asked the Council to consider the question of needing a standard contract for contractors hired by the town. Since Mr. Roosa stated that he has drawn up a contract that will be discussed at the next Council meeting on Monday, June 3, 1996, Mr. Reynolds withdrew that request until Monday.

Mr. Reynolds also wanted the Council to consider where they stand on the issue of hiring new employees or contractors. He expressed concern about the rapid increase in the number of employees because, according to the town charter, only Council can create new positions. He wants the Council to consider a freeze on hiring until November or December unless the Council finds an immediate concern which needs to be addressed. He moved that the Town Attorney draw up a resolution stating that no employees be hired without prior council consultation and approval, and that council members not vote on the resolution until they see the final form. He felt that there was a question about who is responsible for creating new positions and that it needs to be clarified by resolution or an amendment to the charter. Rusty Isler clarified that employees are people whose salary comes out of payroll and are given benefits and pay payroll taxes, not those on contract to work with the town. For example, the Council does not have to create a position to have offices cleaned, but only has to hire them by contract. In addition, the Town Attorney holds an office but is not an employee. He is a contractor. Mr. FitzSimons stated that the Council does not get involved in the hiring of existing positions. Mr. Roosa stated that the Council creates a position and the town manager fills it. So far there is only one administrative department in the town, and that is the Town Manager. All positions that the council has created so far are under the Town Manager. To create a new department, the Council would have to adopt an ordinance. Council only has hiring and termination control over two people: town manager and attorney. All other people are under the Town Manager and Council cannot interfere in that hiring. The motion was withdrawn because the Town Attorney advised that these provisions are already in the town charter.

MOTION: Garr Reynolds moved and Ted FitzSimons seconded that Council not vote on any resolutions until the document is ready for acceptance in its final form. One "yes" vote (Garr Reynolds); all other opposed. Motion failed.

Discussion: Mr. Reynolds stated that in the past the Council has voted on an idea. He reported that Interim Town Manager Mills said that a resolution should go to the attorney who will come back to the Council with a draft of the desired resolution. Council should then discuss the draft and send it back to the attorney for any revisions, and the Council would vote on the resolution when it is returned in final form. Mr. Roosa stated that he felt that changes should be able to be made by voice vote and that it was not necessary to resubmit the resolution to the Council. In the case of hearings, there would not be an opportunity to come back to the Council on another occasion anyway. Mr. FitzSimons pointed out that sometimes it is a matter of degree, whether the change is major or minor, and that the change would be recorded on tape and in the minutes. Mr. Roosa suggested that one solution would be that minutes would not be approved until all the final document are part of the minutes. Mr. Isler pointed out that there should be trust that the five members will not make a rash decision, and that he is afraid that this motion would delay Council business. Ms. Cereceda said everything is in the minutes anyway. If the resolution came back and was not the same as council approved, it would become null and void. Mr. FitzSimons stated that resolutions passed should become a part of the minutes, therefore when the minutes are approved, the resolution would be checked for accuracy at the same time.

MOTION: Ted FitzSimons moved and Garr Reynolds seconded that staff include in distribution of the minutes any documents which were part of the action of the Council. No discussion. Approved unanimously.

Garr Reynolds mentioned that a resident had complained to Marsha Segal-George that he was being harassed by Councilman Garr. He felt that the Council needs a procedure to handle complaints against council members. Mr. Roosa clarified the Council's jurisdiction over other Council members. He stated that council members are in charge of qualifications and forfeiture of office over other council members only in matters of violations of the charter. They have no authority over harassment charges or speeding violations or anything personal. Roosa advised that if a council member is threatened, it should be reported to the sheriff's office just like any citizen. Also if a council member sees an example of code violation or violation of the law, it should be reported to the proper authority the same as any other citizen. But it is not the council member's job to enforce the law or code.

Garr Reynolds wants the fire department to report to the Town Manager on any new building plans received by the fire marshal. Marsha Segal-George stated that she has talked with the fire department and the department only has building plans for anything that they will be required to inspect. She has a meeting with the fire department next week. There is reason to believe that there are some violations going on, and she believes that if Town Hall coordinates with the fire department and the building department downtown, we will have a better chance of finding out what is really going on.

Ted FitzSimons stated that now that the full complement of staff is in place, it appears that certain functions need to be established and implemented: payroll processing, records management system, financial system, land use and development regulations, ordinances, follow-up file, inter-governmental file, legal issues and hearing file, and meeting notices file, etc. He would like to see these issues brought up on future workshop agendas.

Ted FitzSimons also wants the Council to consider a boating safety ordinance that would require all operators of motorized watercraft with greater than 10 horsepower within the waters of the Town of Fort Myers Beach to show proof of completion of an approved boating operation safety course. The state already has this ordinance for persons under age of 16, but he would like to see it apply to all boat operators. Mr. Isler said that almost all the beach territorial waters are idle zones anyway, so any major problems we have are probably caused by people breaking laws that are already in place. Anita Cereceda brought up the question of whether this ordinance could be enforced. If the Council is going to pass an ordinance, they must make sure there is someone to enforce it and that the town can afford to pay for enforcement. Mr. FitzSimons felt that it could be enforced from land with the existing officers. John Gucciardo recommended considering this ordinance along with the jet ski ordinances that will be considered later. Mr. FitzSimons agreed.

Anita Cereceda asked that council members clarify what is proper to discuss under council members' Items and Agendas. Her opinion is that it should be a reporting time and shouldn't be a question and answer session. She feels that if a council member has a question about something that is not on the agenda, they should talk to the Town Manager before the meeting to gather facts. She feels that meeting time is too valuable to be taken up with information that could be gathered outside of the meeting. If a question comes up during the meeting, it would be OK to ask it. Mr. Reynolds felt that this is the only input time, and that it should be O.K. to be used as a clearinghouse time for all council members at the same time. Mr. FitzSimons suggested that now that we have a new phone system, perhaps information gathering should be done via voice mail with the staff.

Rusty Isler asked a question about sidewalks. Can we begin the process of selecting an engineer to lay out a plan for completing the sidewalks on the island and make that a priority for the Council for the next year? Marsha Segal-George answered that the town already has sidewalk cross-section plans from the CRA project. Mr. FitzSimons stated his understanding that all existing sidewalks on the island are in the right of way of county roads and that we have no jurisdiction over them, and that the county has nothing in their 5-year CIP to do any improvements (although they are looking into the possibility of resurfacing existing sidewalks according to a letter received by Marsha Segal-George.) John Gucciardo reminded the Council that the staff is now going through a budget-setting process, and that the Council can set priorities for expenditures, particularly capital improvements, contingencies and reserves. If Council wants to designate money toward engineering or design, the staff will try to find the money for it. (The budget must be submitted to the Council by July 15, and the Council must certify millage of the property appraisal by September 26.) The issue of sidewalks will be discussed at the next Council meeting during the Town Manager's time.

IV. DISCUSSION OF BUDGET ITEMS: FRANCHISE FEES, MUNICIPAL UTILITY TAXES OR RIGHT OF WAY AGREEMENTS

Marsha Segal-George began a discussion of the packet materials that the Council members received explaining franchise fees and ad valorem taxes—how franchise fees and utility taxes would be borne by seasonal residents versus year-round residents. Ad valorem increases would be borne by homeowners. Cable and garbage are the only franchise fees being paid by beach residents now (and they are going to Lee County now, not the town) All others would be pass-through fees onto the bills of everyone on the island in some way or another. The right of way option would be passed through, but it is not being characterized as a fee or a tax. Other fees can be tapped but the staff needs to know the feeling of the Council whether they want to tap them so she can set the budget. Ted FitzSimons pointed out that franchise fees are spread out over a larger base than the ad valorem tax, which seems more appropriate in satisfying the financial needs of the community and visitors. A utility tax can be changed every year depending on budget requirement. On a franchise fee, you are locked in for a long period of time, usually 30 years, and the only way you can adjust revenue downward is through lowering the millage. Garr Reynolds felt that we should pursue the ones that are presently being taxed by the county and try to get those into the town revenue, rather than locking future residents into franchise fees for 30 years. He is in favor of pursuing the FP&L avenue, but he does not feel that the town should raise taxes in order to build reserves. Rusty Isler objected that we don't know if we need more money yet since the budget is not complete. The easiest way to raise revenue is to raise ad valorem taxes because they are already in place. Franchise fees would have to go through the procedure of making new taxes through ordinance, and take a lot of staff resource and time without even knowing if we need them. He felt we should spend our time on other things that must be done for a new town. Marsha Segal-George expects that the town will have enough revenue to run the town for the next year. Problems areas are the Long property, building reserves, and money to implement the comp plan (which the town must do and must get approved by the state). The town must take care of unforeseen state-mandated issues such as drainage. The town needs money for future and for extras, not basics. Anita Cereceda mentioned that some people don't think of franchise fees as "new taxes" even though it is only semantics, it is still a tax. Even though the town was founded on bare-bones government, she thinks now that they have a town, people want more than they thought they wanted at the beginning, or what they wanted, they thought they could get without a tax increase. She thinks it is prudent to gather more revenue to provide those services that people expect and want, and that may get cut by another governmental body (such as Bay Oaks). Also, in case of catastrophic storm damage, the town may need some reserves to help out residents.

V. ADJOURNMENT

The meeting was adjourned by Mayor Cereceda at 9:10 PM.

Respectfully submitted,

Peggy B. Salfen
Recording Secretary