

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
JUNE 3, 1996**  
Nations Bank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I. CALL TO ORDER**

The meeting was opened on Monday June 3, 1996, at 6:30 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 Ray Murphy and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

Absent from the meeting: Council Member Rusty Isler

**II. PLEDGE OF ALLEGIANCE AND INVOCATION**

All assembled recited the Pledge of Allegiance to the flag and Mayor Cereceda gave the invocation.

**III. PUBLIC COMMENTS AND INQUIRIES**

**A. JACK HENRIKSEN**

Mr. Henriksen, a citizen of Fort Myers Beach, addressed the Council about the Virginia Avenue Beach convention center. He gave a brief history of the land use plan at the time the permit was applied for compared to the current plan. Since the case is still in the courts, he encouraged the town to get involved in the case while it is still before the courts.

**B. SHARON FAIRCLOTH**

Mrs. Faircloth, who along with her husband, is the owner and operator of two businesses on Fort Myers Beach, asked the Council to please not make any blanket decisions prohibiting vendors on the parks and public beaches. They previously had a beach concession at Lynn Hall and Bowditch Point, but since the beach was so small, there was not room for their concession. Now that the beach is larger, they would like the opportunity to reopen their concession. They might be able to give out tourist information about the beach from the same booth. They do not feel that a beach concession that rents chairs and umbrellas would be in competition with the Times Square businesses.

**C. BOB KEENE**

Mr. Keene, a resident of the beach, encouraged the Council to become a part of the appeal against the Diamondhead Convention Center, so that the residents would be represented by the town government rather than the county government.

**D. DOUGLAS ECKHARDT**

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F. exchange of ideas and to give an overview of how Lee County handles requests for permits for beach vendors. They do not want to do anything that would go against what the town would like on their beaches. Lee County allows vendors on some beaches and not on others. Since budgets have been cut recently, they are looking at innovative ways to come up with additional revenue, while trying not to have vendors that are in competition with existing businesses. They want to provide services to the people who use the beaches, attract people to use certain low-use beaches, and also bring in a little revenue. Now that the beach renourishment has taken place, there is room for vendors at Lynn Hall Park and she is getting a lot of requests. She would like direction from the town on if they want vendors on county beaches, and if so, what type of vendors? Private property owners can allow vendors (such as jet skis) on their beaches (they just need a vendor permit), so the only question is about county property. Her opinion is that county may as well get some money from it if there are going to be vendors on the beaches anyway. (The fees collected by the county go back into the maintenance of the beaches.) Some vendors pay a monthly license fee, and some pay a percentage of the business. She has put a hold on all permits for Lynn Hall for the time being. The town could have the option of approving vendors individually. The consensus was that the Council needs to schedule a workshop on this subject.

### **G.**

## **H. VII. PRESENTATION BY THE POOL GROUP**

I. Ellie Bunting gave an update for the Build The Pool team. They meet weekly to make plans for their first fundraising effort. They have retained an attorney to help them become a not-for-profit corporation. The next step is to hire a CPA to help in preparing the IRS documents so that donations can be tax deductible, and also to help with books. The expenses to become a corporation are quite high and the team is looking for ways to raise money to cover administrative and annual costs without taking them out of the operating costs for the pool. They have sent letters to local organizations and clubs asking for donations. They want to have a fund-raiser that will become an annual event. There will be a community meeting next Monday here at Town Hall at 7:00 P.M.

### **J.**

## **K. VIII. PRESENTATION BY NATURAL RESOURCES ON NPDES**

L. Tony Pellicer, Natural Resources Manager with Lee County and NPDES Coordinator for the county,

gave an overview of the NPDES (National Pollution Discharge Elimination System) permit process and how the town fits into that process. His focus was to make the Council aware that he is submitting an application for Part Two of the MPDES permit for Lee County that is due June 13, 1996. They would like to include the Town of Fort Myers Beach as a co-applicant if possible. NPDES is a federal program that manages pollutants that enter federal waters and is administered by the EPA. The town incorporation came after they had already filed Part 1, and therefore it would not cost the town anything to file the application if they choose to sign on with the county. It will probably take two years to get a permit from the EPA. Andy Tilton from Johnson Engineering, who has been retained to prepare the application, said that in Part One, they have been mapping known water outfalls into federal waters and gathering data about water quality. Not only do rules need to be made regarding pollution, but they also need to make sure that the counties and cities have the capacity to control discharges. It is a five-year permit, and at the end of that time, the town would have to reapply. In Part Two they have been looking at water quality sampling during wet weather. Lee County is going to try not to create new programs unless absolutely necessary, but to prove through the application that existing rules of the county, the water management district, and the Florida Department of Environment Protection already exist to do the functions that the EPA is asking. Even though it is a co-application, each entity will be issued their own permit. The town will only be responsible for things that affect Fort Myers Beach. All the barrier islands have been lumped under year five, so the town probably won't be liable for any expense for about five years.

**MOTION:** Made by Ted FitzSimons and seconded by Ray Murphy to authorize the Town Manager to sign the certification statement for the Town to become co-applicants with Lee County for the NPDES permit. There was no discussion. The motion passed unanimously.

#### **IX. PUBLIC HEARING ON ORDINANCE PACKET "A"**

##### **A. Town of Fort Myers Beach Alcoholic Beverage Establishment Exposure Prohibition Ordinance**

Mayor Cereceda read the titles and then opened the public hearing for public input. Since no one wanted to speak for or against the ordinance, the public hearing was closed.

**MOTION:** Made by Ted FitzSimons and seconded by Ray Murphy that this ordinance become effective September 30, 1996. There being no discussion, the motion passed unanimously.

##### **B. Town of Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance**

Mayor Cereceda read the titles and then opened the public hearing for public input. Since no one wanted to speak for or against the ordinance, the public hearing was closed.

**MOTION:** Made by Ted FitzSimons and seconded by Ray Murphy that this ordinance become effective September 30, 1996. There being no discussion, the motion passed unanimously.

#### **X. FIRST READING OF ORDINANCE PACKET "B"**

##### **A. Town of Fort Myers Beach Open Alcoholic Beverage Container Ordinance**

Mayor Cereceda read the titles of the ordinance. Public hearing on this ordinance was set for June 17, 1996.

##### **B. Town of Fort Myers Beach Liquor License Restriction Ordinance**

Mayor Cereceda read the titles of the ordinance. Public hearing on this ordinance was set for June 17, 1996.

##### **C. Town of Fort Myers Beach Solid Waste Facilities Assessment Program, MSBU, Ordinance**

Mayor Cereceda read the titles of the ordinance. Public hearing on this ordinance was set for June 17, 1996.

#### **XI. DISCUSSION OF DRAFT OF ORDINANCE PACKET "C"**

##### **A. Town of Fort Myers Beach Water Shortage Plan Ordinance**

There being no discussion of this ordinance, it was set for a first reading on June 17, 1996.

**B. Town of Fort Myers Beach Animal Control Ordinance**

There being no discussion of this ordinance, it was set for a first reading on June 17, 1996

**XII. DISCUSSION OF THE SEWER PLANT PROBLEM AND OPTIONS**

John Mulholland, chairman of the LPA, reported that the LPA unanimously passed a resolution on the condition of the Estero Bay water quality. Since the comprehensive plan of Lee County, which calls for water quality improvement, has not been enforced, the LPA asked that the Council pass an ordinance to test and monitor the water quality in the back bay.

**MOTION:** Ted FitzSimons moved and Garr Reynolds seconded the motion to accept the resolution from the LPA. Passed unanimously.

**Discussion:** Mr. Roosa stated that we would need a test of the waters to see the extent of the problem, what the sources of the problem are, and then what legislation could be enacted to correct the problem. Marsha Segal-George said that we should be able to gather some of the data from other sources that have already made studies. She did not feel that the LPA was asking the town to spend money as much as to acknowledge the problem and study what the town can do. She said that the Council can set a workshop and have people from the county come out to talk about the problem. In order to draft an ordinance, Mr. Roosa would need more input. Marsha Segal-George will work with Mr. Roosa to get the data needed for a draft ordinance.

**XIII. COUNCIL MEMBERS ITEMS AND REPORTS**

**A. TED FITZSIMONS**

Mr. FitzSimons mentioned that off-shore marker buoys may need to be extended further south than they presently go. It needs to be discussed with Parks and Recreation to determine where they need to go.

He also recommended a resolution requesting the Lee County Commissioners to provide the appropriate funding for the installation of utilities for the historic cottage on Bay Road. Mr. Roosa suggested that perhaps a letter signed by the mayor would be enough.

**MOTION:** Ted FitzSimons moved and Garr Reynolds seconded that such a letter be initiated. Passed unanimously.

**Discussion:** Marsha Segal-George clarified that the commissioners have put this request for money on hold while the Historic Society puts together some information about volunteer hours. The society needs the money soon so that they can use some grant money for exterior renovation by September 30. They cannot start renovation until they get the utilities and put in roads.

**B. RAY MURPHY**

Mr. Murphy asked when would be the best time for people to come to the Council meeting if they want to speak to the jet ski issue. Marsha Segal-George said that the best time would be June 17, 1996, when this ordinance will be discussed in its draft form. If there is too much discussion, it may need to be put into a workshop session.

**C. GARR REYNOLDS**

Mr. Reynolds addressed some concerns about setting up an office accounting system. His ideas include hiring a payroll check company and hiring an accounting firm to do the bookkeeping. He also wanted to question the contract for Lorraine Calhoun. Marsha Segal-George clarified that all contracts would be done under Mr. Roosa's form.

Mayor Cereceda called for a break at 8:12 PM. The meeting was reconvened at 8:27 P.M.

**XIV. MANAGER'S ITEMS AND REPORTS**

A. Marsha Segal-George stated that all of her financial requests have to do with services she needs in order to operate for the rest of the year. None of these proposals have to do with the budget she is preparing for the fiscal

year 1996-1997. The proposal from Jody Hester is to do the initial work that is needed to set up the payroll process, approximately 15 hours. Randy Oliver's proposal has to do with setting up the software that is needed for the budgeting process, and also helping with revenue projections and capital improvements, etc. She also needs an auditor and that will be chosen based on competitive bids. She does not contemplate any problem being able to fill these functions and still stay within or below the projections of the pre-incorporation study (\$12,000 for the audit, \$7000 for payroll work, \$30,000 for budget preparation.) She needs them now and doesn't have time to get competitive bids because the budget must be prepared by July 15. If these services are still needed next year, she can put them up for competitive bid if the Council wants. They will all be placed into Mr. Roosa's contractual form, including Lorraine Calhoun's contract for the LPA minutes. Commitments would only be through this fiscal year.

**MOTION:** Ted FitzSimons moved and Garr Reynolds seconded that Marsha Segal-George proceed with the proposed financial package with a 15 hour limit on Jody Hester. There was no discussion. Passed unanimously.

B. Ms. Segal-George needed to comment on three issues even though they are not on the agenda. Before beginning, she addressed one of the statements made in public comment at the beginning of the meeting. She noted that sometimes things come up after the agenda is prepared and she knows of no other way to put important things in front of the Council.

The first is an update on the Long property. It was supposed to close today but did not. The closing has been delayed and is now supposed to close sometime at the end of June. Therefore the town will continue in the process.

The second issue regards beach accesses. She called Code Enforcement to ask if they can have inspectors out on weekends to check on the problem of people using beach accesses as boat ramps. Apparently it not against any county ordinance. The County Attorney is researching this issue. She thinks that this is an important safety issue.

The third issue is in regard to the use of community park impact fees. There is \$500,000 in the fund. Commissioner Judah last week asked if they could move \$300,000 out to be used by the DOT to build the south end sidewalks this summer. There was some dissension at the Board of Commissioners about what that money was earmarked for with regard to the sidewalk CRA issue and the pool issue. She would like the Council to prepare a letter stating the Council's understanding for the use of the money. Since that time, the pool committee has met with Mr. Judah. The pool committee is making a resolution agreeing to the understanding that the \$300,000 would be used for the south end sidewalks. Mr. Judah is trying to move \$200,000 for Cypress Lake High School, and the pool committee is willing to forego any attachment to those dollars in this current year with the understanding that the pool will be bonded in 1996-7 in order for the county to begin land acquisition and start design.

**MOTION:** Motion was made by Ray Murphy and seconded by Ted FitzSimons for Marsha Segal-George to draft a letter to the County Commissioners, to be signed by the Mayor, addressing the issue of the use of these funds. There was no discussion. Passed unanimously.

## **XV. TOWN ATTORNEY'S ITEMS**

Mr. Roosa mentioned that he has been asked to review the brief that was filed by Attorney Bigelow on behalf of the Surf Song Condominium Association. Mr. Roosa's concerns had to do with municipal law and the impact on the town. The issue which affects our town is that of which law applies—the law at the time of filing the application for a permit, or the law at time of issuing the permit. The County's opinion is that the issue has been settled by the Second District Court in 1980 (Smith Vs Clearwater) which said that cities cannot retroactively apply a zoning amendment to deny a permit unless the amendment was pending as the time of application for the permit. Mr. Roosa does not think this applies to the Surf Song Vs Lee County. The county's comp plan required that rezoning appropriate for the town of Fort Myers Beach take place, and that was years before the application. He believes that there was sufficient notice that the county intended to amend the codes. He thinks that the Florida League of Cities might want to join in this lawsuit because it will affect every town in Florida. His recommendation is that the town should file an amicus brief, separate from Surf Song, saying that the law at the time of issuing a permit should apply, not the law at the time of applying for the permit. Also the Council should encourage the Lee County Attorney not to file an amicus brief because the county is no longer an interested party. Mayor Cereceda expressed concern that the public will see this as an argument for or against the Diamondhead project rather than an argument for municipal law and how that law would affect the town in the future. Mr. Murphy asked how much it would cost to file the brief and Mr. Roosa estimated it would cost \$7000 to \$10,000. Mr. Roosa suggested that a possible solution would be for the Council to instruct him to turn this matter over to the Florida League of Cities, because they can be more

objective about municipal law, to see if they think the case has enough merit that they would want to take it on and pay for it.

**MOTION:** Ted FitzSimons moved and Garr Reynolds seconded that we initiate a letter to the County, file an amicus brief, and contact the Florida League of Cities to see if they have an interest in joining. The motion was not voted upon.

**Discussion:** Ray Murphy questioned whether the League would have any reason to join the suit if the town has already authorized our attorney to file the brief. If possible, he would rather have the League pay if the object is to set a precedent. Anita Cereceda suggested that Mr. Roosa try contacting the League first before the Council makes a decision. Mr. FitzSimons offered to amend the motion to include only the letter to the county and to contacting the League, although he still thought that it is appropriate for Fort Myers Beach to file its own brief. Mr. Roosa said that if the League does decide to get involved, perhaps the town could file a brief later with very little money by copying the League's brief.

**AMENDED MOTION:** Ted FitzSimons amended and Garr Reynolds agreed to the amendment that Mr. Roosa contact the Florida League of Cities to see if they would be interested in filing an amicus brief in this matter, and that Mr. Roosa come back to the Council with their reply, and also that he initiate a letter to the County asking them not to file an amicus brief. There was no discussion. The motion passed with one "no" vote from Ray Murphy.

Mr. Roosa then addressed the question of ex parte communications. He reiterated that council members are allowed to talk to people, receive correspondence, and receive visits on matters on which they will sit as a judge as a member of the Council. But he stressed that the Council members are required to fill out a form and make it a part of the record every time they have such a contact. They should fill out the form on a regular basis even though they don't know at the time that it will come to them for judicial determination. If they don't fill it out, they could be disqualified from voting on the subject at a later hearing.

Mr. Roosa then spoke about the draft contract in the council members' packets. He cautioned that it is important that the contract be used for legitimate contractors and not used for employees. Mr. Reynolds questioned the part about purchase orders. Mr. Roosa explained that the contract can be used for service or for commodities such as gasoline that you want to purchase on a continuing basis but not take possession of all at once. The contract is intended to be an all-purpose contract, so that not all provisions will apply to each contract.

Concerning the CRA, Mr. Roosa reported that he sent a letter to the county attorney's office asking how they would complete the sidewalk project. The County Attorney replied that he does not see it as a legal question. But it looks as if the county is attempting to do the entire project as promised, but the CRA portion is going to be the Times Square portion.

## **XVI. PUBLIC COMMENT AND INQUIRIES**

### **A. MARY DE VINCENT**

Ms. DeVincent requested that the Town Council take action on two issues: benches on Estero Boulevard that are too close to the roadway and should be moved back, and the lack of shelter to protect people waiting for the trolleys. She suggested that perhaps shelters could be placed at alternate stops in order to cut the expense. She also mentioned the need to post trolley and bus schedules at the stops, not just at the transfer stop on Summerlin..

### **B. CEEL SPUHLER**

Ms. Spuhler, who lives on Estero Blvd., mentioned the danger to swimmers of jet skis coming too close to the shore. She stated that the regulation for markers is 500 feet from the 100 year mean high tide line, and that they are placed by the Marine Science Department of Lee County. The distance between markers is not regulated but is usually about and ¼ mile apart. There are no markers from the Holiday Inn south to the San Carlos Pass. The Sheriff's Marine Patrol said that the markers have not been replaced because of storms and/or vandalism and that the sheriff's department only patrols once a day. She suggested that there be a franchise fee on the jet ski businesses

that is so high that it would generate money to go toward the costs of patrol. In addition, she also asked if signs can be posted saying that jet skis cannot go into the tidal pool.

**C. PETER LISICH**

Before addressing his issue, Mr. Lisich commented that the Town Council is not being consistent about enforcing rules and he encouraged the council to set a policy. Concerning Diamondhead, he asked Mr. Roosa what was the issue in the lawsuit, which court the suit is currently in (circuit or appellate), what was the decision of the circuit court, and how much experience Mr. Roosa has in the appellate court on land use and zoning cases? As he understands it, the lawsuit is between two property owners and he doesn't think the town should take the side of one over the other since Diamondhead was approved long before the town talked about incorporating.

**XVII. ADJOURNMENT**

Mayor Cereceda adjourned the meeting at 9:30 P.M.

Respectfully submitted,

Peggy B. Salfen  
Recording Secretary

AMENDMENTS TO THE MINUTES OF MAY 6, 1996

(As recorded in the minutes of June 3, 1996)

Ted FitzSimons stated that in the minutes for May 6, page 4, third paragraph from the bottom, the discussion between John Gucciardo and Attorney Roosa does not relate to the motion but to a different discussion about the Gullwing property. The two items should be separate. In addition, on page 5 at the bottom, the motion ends with a statement "not passed." There was no vote taken on that motion at that time. The motion was only seconded for discussion and the discussion evolved into the change in the motion as stated at the bottom of page 6.

D.