

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 17, 1996
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I CALL TO ORDER

The meeting was opened on Monday, June 17, 1996, at 6:33 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 and Ray Murphy; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.
Absent from the meeting: Council Member Garr Reynolds

II INVOCATION AND PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag. Rusty Isler gave the invocation.

III PUBLIC COMMENTS AND INQUIRIES

A DONNA VARNEKE

Ms. Varneke spoke against the boating safety ordinance, which she felt would be restrictive of trade in the town. We have good programs in town (power squadrons and Coast Guard) where people are rewarded with reduced marine insurance for attendance, but it would be unfair to someone who is only here for a week. Since the economy of the town is seasonal, this ordinance would unfairly target those business owners who must make their living for the whole year off of seasonal tourists.

B JANE DRAPER

Ms. Draper spoke in support of the proposed water safety ordinance. She feels that there is a serious problem with recreational watercraft, but no one in the industry is proposing any solutions to the problem. They just don't want to have more restrictions on rentals. She has worked for a local marina and she knows that the only requirement to rent a boat is a credit card, which can create a safety hazard with inexperienced boaters. She has had the experience of coming up out of the water to find a waverunner bearing down upon her, which was a frightening experience. She thinks that the residents and tourists deserve to be protected.

C SHARON FAIRCLOTH

Mrs. Faircloth, one of the owners of Holiday Water Sports, spoke against the proposed water safety ordinance. She said that the ordinance as written would be unenforceable and ineffective. Visitors to the island who are unaware of the ordinance could be pulled over when they enter 1000 foot boundary. People would no longer be able to come to the restaurants by boat or to park their boat for a picnic. It would put the local vendors out of business if the renters must take a lengthy course before they can rent a waverunner or a boat. Tourists would go elsewhere and it would therefore affect all businesses in town, including T-shirt stores, restaurants, hotels, etc. She wants more safety, but she feels that the vendors already encourage safety among renters. Business owners watch their rental craft and go out to retrieve them if someone is being unsafe because unsafe boaters will ruin their boats and therefore their business. Their customers are given strict instructions, and must read the rules and sign that they will follow them before they are allowed to rent any watercraft.

D JIM FIGUERADO

Mr. Figuerado, owner of Mid-Island Marina, stated that his employees and family are totally against the proposed boating safety ordinance. The State has passed a law that should be sufficient. He tries to run a family marina, and the average age of his rental clientele is 52, most of whom are grandparents and families who are only down for a few weeks. Seventy-four percent of his customers have not taken a boating safety course, but having a license does not make someone a good boater or a good car driver. If the ordinance goes into effect, he will have to lay off seven employees. Forty-two percent of his business comes from boaters from Fort Myers and Cape Coral who would no longer come because it would not be worth the aggravation.

E CHRIS SCHAAB

Mr. Schaab owns a jet ski rental operation. He stated that safety is big concern, and that one accident is too many. But he and his employees are very safety conscious and he feels it is should be a state jurisdiction, not a town ordinance.

F AL DURRETT

Mr. Durrett, owner of Fish Tale Marina, has had boat rentals since the sixties and has never had a major problem. He said that if the ordinance passes, he would lose storage customers and revenue, and therefore the town would lose local taxes. Cape Coral people would no longer come to town to eat in our restaurants. He would probably have to let six employees go, and most of them live on the island, which would directly affect the economy of the town and its residents.

G KAREN FINCKLEA

Ms. Fincklea stated that she has worked in several marinas (as she does now) with boats of all sizes. She stated that there has never been an accident where anyone has been hurt on a moving powerboat rental. They give strict instructions to all customers including foreign visitors who don't speak English. She would lose her job if this ordinance passes. She mentioned that this ordinance would affect everyone, not just the boating business.

H JERRY CROWLEY

Mr. Crowley, a property and business owner on the beach, stated that this ordinance would cause a severe hardship to himself and his family. He has never had a problem with any jet ski rentals, so perhaps the problem is with privately owned jet skis. He instructs his customers in safety before they are allowed to take the jet skis out.

IV APPROVAL OF MINUTES: May 16, May 20, May 30, and June 3, 1996

Motion: Ray Murphy moved and Ted FitzSimons seconded that all minutes be approved.

Discussion: Ted FitzSimons pointed out that the May 16 meeting was a combination workshop and hearing. It is not clear in the minutes when the hearing begins and ends, and there is no motion to show the result of the hearing. In addition, Rusty Isler would like the discussion of the web site to say that "the town should have its own web site." It was suggested that the minutes of May 16 be sent back to Lorraine Calhoun for completion. Ray Murphy mentioned that on page 13 of the May 20 minutes, the name should be "Mertens" instead of "Martens."

Amended motion: Ray Murphy amended the motion and Mr. FitzSimons agreed that the minutes of May 20, May 30, and June 3, 1996 be accepted as amended. There was no discussion. The motion passed unanimously.

V PRESENTATION BY HISTORIC SOCIETY

Sue Davison thanked the Council for their encouragement and letter to the county in getting utilities extended to the historic cottage on Matanzas Preserve. Lee County gave a unanimous vote to approve the spending of \$30,000 to extend water and sewage lines to the cottage. In appreciation the society extended honorary memberships in the Estero Island Historic Society to each of the council members. She presented plaques to the council members, and thanked Penny Brown for designing the honorary certificates.

VI PRESENTATION BY TOWN PRIDE

Cherie Smith was unable to attend the meeting due to a family emergency.

VII APPROVAL OF EXPENDITURES

Marsha Segal-George mentioned that the staff was withdrawing the request to pay the item for Workers' Compensation. John Gucciardo and Don Deane have met with the Florida League of Cities and renegotiated a reduced premium which will be presented later. Ted FitzSimons moved and Ray Murphy seconded that the remaining expenditures be approved. There was no discussion. The motion passed unanimously.

VIII FIRST READING OF ORDINANCE PACKET “C”

A Town of Fort Myers Beach Water Shortage Plan Ordinance

Mayor Cereceda read the titles and set the public hearing for July 1, 1996.

B Town of Fort Myers Beach Animal Control Ordinance

Mayor Cereceda read the titles and set the public hearing for July 1, 1996.

IX DISCUSSION OF DRAFT OF ORDINANCE PACKET “D”

A Town of Fort Myers Beach Vessel Control and Water Safety Ordinance

Mr. Roosa confirmed that this is the same ordinance that has been in existence since 1990 (Lee County Ordinance 90-51) and provides for speed limits, enforcement, safe operation, prohibited activity, regulation of personal watercraft rental, etc. Ted FitzSimons asked if the part on page 6, line 48, should say “waters of Town of Fort Myers Beach” rather than “waters of Lee County”. Mr. Roosa will read it over and correct it if necessary. Also on page 7, line 33, Mr. FitzSimons asked if the \$500,000 combined single limit is consistent with the ordinance on parasailing which requires \$1,000,000. Mr. Roosa stated that the county must have decided that more insurance is required for parasailing than personal watercraft. Mr. FitzSimons thinks they should be the same in both ordinances (at the higher amount). Mr. Roosa said that the purpose of requiring insurance is to ensure accountability. The town has the right to raise the limits, but they should be aware that it would raise the cost to the vendors for the increased insurance. If the ordinance requires that the town be named as a named insured on the policies, it would better protect the town. (It is in the parasailing ordinance, but not in this ordinance, but it probably should be.) Mr. FitzSimons noted that there is a lot of overlap between the two ordinances and asked if the two could be combined. Rusty Isler said he feels it is better to have the same ordinances as Lee County, unless there is some strong reason for changing, because it will make it easier for the Sheriff to enforce them. It will cost the town in confusion and money in the future if we change the ordinances too much from Lee County’s. Mr. FitzSimons also pointed out that on page 8, line 22, the wording needs to be changed from “Lee County Board of Commissioners” to “Town Council.” Marsha Segal-George suggested that the Council may want to have a workshop including public input so that citizens and people in the industry could have a chance to discuss these ordinances which have so much interest and affect so many people. Mr. Roosa will redraft the ordinances and also work on a draft of the two ordinances combined. The Council decided to pull Ordinances A, C, and E of Packet “D” from further discussion and reset them for a workshop, probably in the middle of July. Mr. Roosa passed out the most recent state law dealing with boaters under age 16 for the Council’s information when they consider Ordinance E.

B Town of Fort Myers Beach Convenience Store Security Ordinance

There was no discussion. It was set for first reading on July 1.

C Town of Fort Myers Beach Personal Watercraft Rental Vendor License and Parasailing License Ordinance

This item was pulled from the agenda for later discussion at a workshop meeting.

D Town of Fort Myers Beach Recovery From Disaster Ordinance

Mr. Roosa encouraged the Council to read it carefully because it doesn’t involve enforcement by the sheriff and needs to be modified to meet the needs of the town. Mayor Cereceda suggested holding off on passing this ordinance until our Town emergency plan is in effect. Marsha Segal-George reminded the Council that if they don’t get this ordinance in place by October 1, there will be no ordinance in effect at all. She will look at it again before setting it for first reading.

E Town of Fort Myers Beach Boating Safety Ordinance

This item was pulled from the agenda for later discussion at a workshop meeting.

X Selection of Planning Consultant for LPA

Marsha Segal-George reported that the LPA advertised for a planning consultant and interviewed three candidates. The LPA recommends Spikowski Planning Associates, but the decision is up the Council and they can interview the candidates themselves if they desire. If the Council approves the recommendation, the LPA will then discuss the work plan with Mr. Spikowski and negotiate the price with regards to the next three months and then it would come back to the Council for approval in the form of a contract. The remainder of the contract after the first three months will be presented to the Council as part of the regular budget. John Mulholland, chairman of the LPA, spoke about the selection process. He reported that four out of six votes went to Spikowski and each of the other candidates got one vote each.

He recommended that the Council accept their recommendation to hire this planning consultant to help write the comprehensive plan in the time limit of eighteen months.

Motion: Ted FitzSimons moved and Rusty Isler seconded that the Council accept the recommendation of the LPA to hire Spikowski Planning Associates. There was no discussion. The motion passed unanimously.

XI DISCUSSION OF POSSIBLE DIRECTION TO STAFF ON THE GULLWING HOTEL

Marsha Segal-George reported that the staff has been exchanging letters with the county regarding the potential Gullwing Hotel. She feels that the staff has gone as far as they can go with the county without more direction from the Council on whether they want to drop the issue or take it another step farther. She and Mr. Roosa have come up with an option for the Council to consider. The Council can notify the county that the Council wants to have a hearing on whether these permits should be extended again when it comes up for renewal in August. Ted FitzSimons questioned whether this hotel use would have been allowed in the original RM2 category. The county has answered that according to the 1962 zoning ordinance, hotels and motels were allowed in the RU3 District, which was converted to the RM2 with the adoption of the 1978 zoning regulation. RM2 does not allow commercial hotels. It appears to Mr. FitzSimons that they shouldn't have been given a permit to convert the condominium to a hotel on RM2 property. Mr. Roosa said that the law requires that you must begin construction and have continuous construction in order to keep the permit. The Council can have a hearing to make them show cause why the permit should be reissued rather than letting it expire. The county has been taking the position that permits can be renewed administratively without showing cause. The owner has changed from a condo to a hotel and has added a Group 3 restaurant since the permit was originally issued in 1987. Anita Cereceda and Ted FitzSimons agreed that they felt that the town should hold a hearing if the property owner asks to renew the permit. The hearing would allow Town to notify the property owner that the permit will expire on a certain date, and prior to that date there will be a hearing where the owner will have an opportunity to present to the Town Council his reasons for an extension and show cause why the permit should not expire. If he fails to show, the permit will expire. The town would need to give the property owner 30 days notice. Marsha Segal-George will try to pull out more of the file and bring it back at the July 1 meeting before a decision is made.

XII COUNCIL MEMBERS' ITEMS AND REPORTS

A RUSTY ISLER

Since he missed the last meeting when the accounting system and payroll were discussed, he wanted to express his opinion that accounting does not need to be done out of house. The town would need to get consultants to help set up the accounting system, but that it should be handled here.

He is working toward setting up a website for the town that would have all past minutes, the agendas, schedules, etc. He has received the early minutes from Sanibel's computer files and is hoping to get the remainder of the minutes from Lorraine Calhoun so that they would all be on the computer. The website would also serve as a backup for off-site copies of the minutes rather than taking paper copies and converting them to microfiche.

He also offered to help the staff in setting up fixed asset records since the auditor is going to require serial numbers and prices of our equipment.

He had a meeting with John Gucciardo about Estero Bay. They are compiling a list of all the organizations who have an interest or are affected by it, to encourage everyone to work together to protect our natural resources.

Regarding the issue of sidewalks, he would like the town to make it a priority to have continuous sidewalks from Bowditch to the San Carlos Bridge on the bay side of the road, improve the ones we have, install ones that are missing, widen them and resurface them. He is afraid this issue is getting lost because there are so many issues involved. The gas tax has to be used for transportation, and the sidewalks are considered transportation and should be a good priority use for that money. Marsha Segal-George mentioned that at the next workshop meeting when the council sees the draft budget, they will see a budget for CIP (Capital Improvement Plan) which is for sidewalks. Part of the problem is in working out arrangements with the county. Part of Estero Boulevard is a county road, so we have to work with the county, although Estero north from the bridge appears to be a town road. In addition, the Florida Dept. of Transportation is working with the county on sidewalks on the south end.

He also mentioned that he has read Ted FitzSimons's housekeeping memo regarding budgeting and financing, and is looking forward to working on those issues.

B TED FITZSIMONS

He has received a copy of a two-page article from Forbes Magazine (June 3, 1996 issue) about jet skis and the confrontations that are going on around the country. Thirty-six states have laws that set minimum ages for personal watercraft operation, outlaw wake-jumping, night-time riding and reckless operation.

C RAY MURPHY

Mr. Murphy had no new items to discuss.

D ANITA CERECEDA

She has scheduled another meeting with business people this week. Also, she has been trying to orchestrate an arts and crafts fair at Lynn Hall Park for the Fourth of July. She has looked into having a Big Band for the 6th, but she needs more money for support.

The Council took a break at 8:04 P.M. and the meeting was reconvened at 8:18 P.M.

XIII TOWN MANAGER'S ITEMS AND REPORTS

Before talking about the agenda items, Marsha Segal-George reported that on Wednesday the County is going to officially set the allocation for the gas tax. She and Mayor Cereceda are planning to go to the meeting. Randy Oliver will have some calculations to show what the other cities would receive if they were forced to take the statutory formula. If Fort Myers Beach were to get the same amount as other cities, we would get the same as Sanibel (\$1,000,000 per year that will grow over the next five or six years.) In contrast, we are getting about \$470,000, even though our population is greater than Sanibel's, and the gap will grow each year. Once the County has made their final action, we can then appeal.

She announced that the council has been invited to a County dedication of the Division of Communication at the Emergency Operation Center, on Thursday, June 20 at 11 A.M. including lunch.

She reported that the first presentation on the budget will be at Thursday's workshop meeting. If the Council has no objection, she would like to offer the services of herself and John Gucciardo to talk to local organizations about the budget, since it is the first budget and everyone in the town is concerned. The council agreed that it was an excellent idea.

A Request for letter of support from the Sheriff

The Sheriff has asked for a letter of support from the council regarding his budget sessions with the county.

MOTION: Ted FitzSimons moved and Rusty Isler seconded that the Council write a letter of support for the Sheriff's budget. The motion passed unanimously.

Discussion: Mayor Cereceda would like to know what definition of services we are going to get before we support his budget. Marsha Segal-George said that according to law the sheriff will offer the same services at no extra charge. Mr. Roosa stated that the Sheriff is a constitutional officer and is responsible for crime throughout the county, not just in the unincorporated areas. He is required by the state to protect every citizen in the county even in the cities that have their own police force. Mr. Roosa thinks that it would be in our favor to support the sheriff because he is our only source for criminal investigation and traffic regulation. Mayor Cereceda clarified that she was not trying to fight the sheriff, but that she only wants an answer to the question of what we are getting for the money he is allocating and that we are contributing toward. The question was asked several months ago and has not been answered yet. Ted FitzSimons said he does not believe we will get a definitive answer because the sheriff will maintain that services are provided on an "as need" basis and that he cannot tell us how much he is going to spend. Mr. Roosa thought that the only thing we should state is if some need of the town is not being met. The Sheriff will not charge the city more unless we pass an ordinance that requires extra services. He will not charge more if we have an outbreak of crime and he must send more patrols.

B Request For Money for the Historic Society Cottage

She would like to request \$1400 to widen the doors of the historic cottage to make it accessible to the handicapped. This came about because the county suggested that perhaps the town should put some money in if the county is putting in \$30,000. The town still has not touched the money in Tallahassee which is earning interest. What is funding the town now is the state revenue sharing money, so she feels that the money is available. In addition, the staff will be helping the historic society to look into grants.

MOTION: Ted moved and Rusty Isler seconded that \$1400 be made available to the Historic Society for the purpose of widening the doors of the cottage. There was no discussion. The motion passed unanimously.

C Future Function of the LPA

When the Council passed the ordinance for the LPA, they were authorized to prepare the comp plan, but it also says that by resolution, the council can add duties and functions to the LPA. She would like to use the LPA as the zoning board or the planning council in a hearing examiner function. The LPA feels that they could perform a valuable function for the Council. It would allow them to hold the first hearing on a zoning case or a land use issue and then make a recommendation to the Council. That allows a hearing to be held in the community with all the affected parties able to come and be heard before it ever gets to the council. She feels that it would be beneficial to the Council. John Mulholland, chairman of the LPA, explained that after the LPA learns all they need in order to develop the comp plan, it would be a shame to waste that knowledge when they could be helping the council. Ted FitzSimons expressed concern that this might give the LPA a burdensome load right now when they have a large job ahead of them for the next 18 months in making the comp plan. Mr. Mulholland did not think it would be a problem doing both jobs and still meeting the comp plan deadline. Mr. Roosa reported that Cape Coral is using the LPA that way, and they were able to do it at the same time as they did the comp plan. Rusty Isler reported that the County felt that the drawback is that the attorneys and parties had to go to two hearings and it caused duplicate work and attorney expense. Marsha Segal-George felt that the problem in the county was the sheer number of cases that were clogging the Council's time. She feels that hearings should be heard here on the island by people that have been picked by the Council. She feels that this way the Council will receive a more fully formed case that has already been looked at from the town's perspective.

MOTION: Ted FitzSimons moved and Mayor Cereceda seconded that the town attorney should prepare a resolution to amend the ordinance that established the LPA to give them the additional responsibility. There was no discussion. The motion passed unanimously.

XIV TOWN ATTORNEY'S ITEMS

Mr. Roosa discussed whether the town should consider a Water Well Code. The ordinance establishes a well construction advisory board, and since the council has been reluctant to establish committees, he wanted to make sure that the council wanted to have another board created. The island is serviced by a water utility, so he is not sure the well problem is urgent enough to establish a board. The real concern is contamination, and our island is not downstream of anyone. Mr. Isler feels like the threat to public health is minimal, because all the wells here are not drinkable and most are too salty to even use for irrigation. There was general agreement that this ordinance is not needed at this time.

The other large group of ordinances which haven't been passed yet have to do with solid waste collection and franchise. He wanted to know how much the Council wants to adopt. The County has the responsibility to contract for the solid waste service and as part of that contract, they require everyone to subscribe to the service. The Town does not have a franchise for the service. The town has an interlocal agreement that locks the town into the county's package. We have made provision for the land fill and the collection, but the next question is whether we want to adopt a franchise when we don't have a franchise hauler. Mr. Roosa recommended that the Council not pass all these ordinances unless we see a need in the future. The Council agreed.

Mr. Roosa then passed out a paper showing the status of the things he is working on.

He reported that there was a hearing held on the Nyman case on May 31. The hearing has been continued. The applicant is redesigning their plans.

The Mid-Island Marina mediation hearing will be on June 20 to see if there is a way of resolving the issue.

The Gas tax allocation will be decided on Wednesday morning at the County Commissioners meeting.

The Long property hearing for historic designation is set for July 1.

Regarding the CRA funds, he has sent a letter to the county attorney and it has been forwarded to the County Commission regarding the timetable for sidewalks. He has read in the newspaper that there was a motion to use impact fees for sidewalks, but apparently it did not pass.

He has still not heard a response from the county attorney's office regarding the cable TV franchise.

Regarding the Haskell/Sunstream appeal, he has received all of the briefs and he is working on the research for that. He talked with the Florida League of Cities and they said that they do not file briefs unless it is with the Supreme Court. He does have a new name to contact there, however. He reported that the county's brief did not help the situation. They made a great many admissions against interest that do not help the town. They claim they had no choice but to issue the permit based on the original application and not the amended law.

Regarding the Bay Protection Ordinance, he has provided the Council with copies Chapter 62 of the Florida Administrative Code. It appears that now there is no further need for the town to take any action on bay protection because the State of Florida has already addressed the issue.

He is working on a port fee ordinance. It is a preliminary draft that will need more work before coming to the Council.

Regarding the ex parte form, the Council Members are only required to fill out forms on actions in which the council members may sit as a judicial board. It is not required that they report talking about something legislative like an ordinance. If it is a zoning matter, for instance, it would be judicial and should be filled in right away. He recommends turning it in to town manager right away, but they can be held until it becomes a hearing if the council member prefers. They must become public record before it comes before the Council for a vote. Ted FitzSimons mentioned that the LPA will also have to fill out ex parte forms when they start sitting as hearing examiners.

XV PUBLIC COMMENTS AND INQUIRIES

A BILL PERRY

Mr. Perry owns Aqua Sports Unlimited at the south end of Estero Island. He and his father helped work on the first water safety and vessel control ordinance (90-51) in 1990. At the time the county thought that half million dollars liability was enough. Last year they worked on the other ordinance (95-13) and the liability was increased to one million. He listed the amendments that he and fellow PWVL Operators would like to see to improve the 1995 ordinance:

-Limit the vendors to six rentals and one chase vehicle per location. Miami Beach limits their vendors to four rentals and one chase vehicle.

-Impose a limit on number of PWVL and parasail licenses. There are 22 PWVL and 5 Parasail licences already, and he feels that is enough for Fort Myers Beach. Miami Beach has a moratorium already.

-Increase enforcement by raising fines for speed violations to \$500.

Mr. Perry ran out of time, and Mayor Cereceda encouraged him to return at the workshop on boating.

B DR. JOE CROKER

Dr. Croker mentioned that the State says that the Council must hold public meetings so the public and can attend and participate. But in order to have input, the public must be able to hear. Since the town has some money, they need to buy a better speaker system or microphones or amplifier. The public cannot hear the dialogue between the city manager and the council members.

The meeting was adjourned at 9:11 P.M.

Respectfully submitted,

Peggy Salfen

Recording Secretary