

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
JULY 1, 1996**  
Nations Bank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I CALL TO ORDER**

The meeting was opened on Monday, July 1, 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 Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

**II PLEDGE OF ALLEGIANCE AND INVOCATION**

All assembled recited the Pledge of Allegiance to the flag. Ted FitzSimons gave the invocation.

**III PUBLIC COMMENTS AND INQUIRIES**

**A FLIP HARBY**

Mr. Harby, President of Concerned Citizens of Fort Myers Beach, spoke about the Times Square project. The Concerned Citizens have voted to take on the triangle at the base of the bridge as a project and to correlate the triangle to the wave pattern of the beautification project. The company he works for has agreed to donate the pavers, Custom Pavers in Naples will install them, and the Concerned Citizens will provide the labor to prepare the site. He showed a sample of the colors that will be used. They will be installed in about three weeks.

**IV APPROVAL OF MINUTES**

**A Minutes of May 16, 1996**

Ray Murphy moved and Ted FitzSimons seconded that the minutes be approved as submitted. There was no discussion. The motion passed unanimously.

**B Minutes of June 17, 1996**

Ray Murphy moved and Ted FitzSimons seconded that the minutes be approved as submitted. There was no discussion. The motion passed unanimously.

**V APPROVAL OF EXPENDITURES**

Ray Murphy moved and Ted FitzSimons seconded that the expenditures be approved as submitted. The motion passed unanimously.

**VI PRESENTATION BY LINDSEY SAMPSON, LEE COUNTY SOLID WASTE DEPUTY DIRECTOR**

Mr. Sampson presented the proposed solid waste rates for 1996-7 for Lee County. According to the interlocal agreement, he will present this information annually to the Council. He passed out a packet and an updated summary sheet. Fort Myers Beach is included in Franchise Area #1. The residential rates will be reduced from \$196.11 to \$186.56. The disposal rate consists of tipping fee and solid waste surcharges, and the total will be reduced from \$66.20 to \$62.43 per ton. In addition the fee for horticultural waste processing will be reduced from \$26.43 to \$14.89 per ton. The rates for commercial construction and demolition debris will remain the same at \$35.00 per ton. The fee for tires will vary according to the size of the tire and preprocessing. The residential rate is made up of three categories: the collection fee paid to the hauler, the disposal and surcharge, and the billing fee which is paid to the tax collector (\$10 per customer.) The solid waste assessments are set according to the amount of garbage a unit is expected to generate. A residential building of up to 4 units is \$33.44 per unit. For multi-family areas of more than 5 units (apartment complexes, condominiums, and mobile home parks) the assessment is \$27.43 per unit per year (billed directly by the tax collector to the owner of the facility). Businesses are charged according to their size and generation category. A low generating category would be cemeteries, parks, etc. High

generation would be a fast food restaurants or convenience stores. For the purposes of comparison, they have shown the difference between an MSBU (Municipal Service Benefit Unit) vs. a MSTU(Municipal Service Taxing Unit). The difference would be about .4 mils. Fort Myers Beach has decided to use the MSBU where the assessment is made according to usage rather than property value. Marsha Segal-George stated that these rates are in agreement with the interlocals that the council has already approved.

## **VI PUBLIC HEARING OF HISTORICAL PRESERVATION BOARD CONCERNING THE LONG PROPERTY**

The Council was convened as the Historical Preservation Board.

Gloria Sajo, Annette Snapp, and Bill Grace from the Lee County Planning Division gave a presentation about the Long property. Ms. Snapp showed a slide that indicated that there were also Calusa Indian villages on Pine Island and Mound Key. Shells were important for tools because stones in this area are not good for tools. They have pulled carved and painted artifacts from other shell mounds that show the complexity and craftsmanship that the Calusa reached. The Calusa in this area had a highly developed society but were not agricultural. Ponce de Leon came to the area and reached Pine Island and Mound Key and interacted with the Calusas. Menendez, the Spanish governor of Florida, came here in 1566 and met with Carlos, King of the Calusas, probably at Mound Key which they believe was the capitol of the Calusas. The large size of the Long site, its uncommon location on a barrier island, its potential for yielding scientific information, the proximity to other known sites, and the components that are visible on the surface indicated to archeologists from the University of Florida and the Florida Museum of Natural History that the site would be eligible for archeological listing on the National Register of Historic Places.

Bill Grace spoke about the more modern history of the site. In 1896, this property was part of the first homesteaded property on Fort Myers Beach . It was homesteaded by Robert Gilbert who was a Koreshan. Robert Gilbert sold 80 acres, including the Long property, to William H. Case. Mr. Case was one of the earliest settlers in the area, he created the first subdivision on the beach, and was involved in putting the first bridge to the island. He built the house on the property in 1909. The house is still there and is incorporated into the house as it is today. The house itself has some historic significance, but especially because the site is associated with the Koreshans and with some of the earliest developers of the area, it would make the site eligible for historic preservation.

Mayor Cereceda asked if there was any more testimony from the public or from a representative of the property owner. There were no representatives from the owner. Nancy Coker, who has lived at 143 Connecticut Street for 14 years, stated that the property is beautiful, and since we have so little on Estero of significant value, she would hate to see it destroyed. There are 15 children on the street, and there is some concern about the added traffic, so she would like the Council to keep the potential traffic problem in mind. Helen Caldwell, a resident since 1964, lives in the Zimmer Estate, which is adjacent to Long property. She realizes this site is very special, and has seen the mound and some Indian relics when she visited Florence Long. She thinks it is wonderful that the town can save the site not only for ourselves but for our grandchildren, and she thanked the town for what they were doing. Flip Harby, a resident since 1946, feels that preservation of history should be of supreme importance, but he questioned whether the Town can afford to buy it and what would be the method of repayment of the debt. This would involve .75 million dollars out of a 2.3 million dollar budget, which he feels is too much to take on this early in the life of the town.

The public hearing was closed.

Mr. Roosa prepared a resolution which contains certain findings of fact. The Council should make those findings based on the testimony that was presented this evening. They do not have to find all the facts in order to make the designation. Mr. Roosa read the resolution for the benefit of the public. Mr. Roosa said that it gives property owner certain responsibilities and benefits. It would give them great liberality for code variances (building code violations, etc.). Also, in order for owner to develop any activity on the property, they have to have the approval of the historic board.

**Motion:** Ted FitzSimons moved and Garr Reynolds seconded that the Council, acting as the Historic Designation Board, adopt the resolution. There was no discussion. The motion passed unanimously.

## **VIII PUBLIC HEARING ON PACKET "B" A TOWN OF FORT MYERS BEACH OPEN ALCOHOLIC BEVERAGE CONTAINER**

**ORDINANCE**

Mayor Cereceda read the titles of the ordinance and opened the public hearing. There being no public comment, the public hearing was closed. Mr. Roosa pointed out that this is the same as Lee County Ordinance 84-1.

**Motion:** Mayor Cereceda moved and Garr Reynolds seconded that this ordinance be adopted. There was no discussion. The motion passed unanimously.

**B TOWN OF FORT MYERS BEACH LIQUOR LICENSE RESTRICTION ORDINANCE**

Mayor Cereceda read the titles of the ordinance and opened the public hearing. There being no public comment, the public hearing was closed. Mr. Roosa pointed out that this is the same as Lee County Ordinance 76-09 and 79-1.

**Motion:** Mayor Cereceda moved and Garr Reynolds seconded that the ordinance be adopted. There was no discussion. The motion passed unanimously.

**C TOWN OF FORT MYERS BEACH SOLID WASTE FACILITIES ASSESSMENT PROGRAM, MSBU, ORDINANCE**

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

**Motion:** Garr Reynolds moved and Ray Murphy seconded that the ordinance be adopted. There being no discussion. The motion passed unanimously.

**IX PUBLIC HEARING PACKET “C”**

**A TOWN OF FORT MYERS BEACH ANIMAL CONTROL ORDINANCE**

Mayor Cereceda read the titles and opened the meeting for public comment. Flip Harby asked if there were going to be two fees, one for the town and one for the county. Mr. Roosa answered that there will be \$4.50 license fee, which will probably still be handled through the veterinarians, but you will only have to pay the town, not the county too. The Council needs to give direction to the town manager on how to set up the program, which will not raise taxes and is not a fee-funded service. The Humane Society provides this service to all the other cities in this county, but the County is the only one who has a contract with them. Fort Myers Beach has some good data (we were 4.2% of their service calls last year.) Since Lee County paid \$690,000, that would mean our portion should be about \$30,000. Marsha Segal-George will come back to the Council with an agreement as soon as it is available. The public hearing was closed.

**Motion:** Rusty Isler moved and Ted FitzSimons seconded that the ordinance be adopted. There was no further discussion. The motion passed unanimously.

**B THE TOWN OF FORT MYERS BEACH WATER SHORTAGE PLAN ORDINANCE**

Mayor Cereceda read the titles and opened the meeting for public comment. There being no discussion, the meeting was closed for public comment. Mr. Roosa stated that this ordinance is the same as Lee County Ordinance 90-3, and that the regulations of the Water Management District are attached.

**Motion:** Garr Reynolds moved and Ray Murphy seconded that the ordinance be adopted. There was no discussion. The motion passed unanimously.

**X FIRST READING OF PACKET “D”**

**A TOWN OF FORT MYERS BEACH CONVENIENCE STORE SECURITY ORDINANCE**

Mayor Cereceda read the titles. The ordinance was set for public hearing on July 15.

**XI DISCUSSION OF DRAFT OF ORDINANCE PACKET “E”**

**A TOWN OF FORT MYERS BEACH NOISE CONTROL ORDINANCE**

Ted FitzSimons said that Lee County is in the process of changing their noise control ordinance because the solid waste contract allows garbage pickups which are inconsistent with the times allowed in the ordinance. They are considering moving their time for haulers to 6 A.M. in residential area. They are not supposed to make noise until 7 A.M. under the present ordinance. However, commercial dumpsters can be picked up all night. It is our town and the Council can choose what time they want, but Mr. Roosa will check with the County before he puts it into final form.

Section 5 has to do with sound levels when measured at the property line of the receiving land use. The difficulty is with outdoor entertainment, Part C(3). This has a special prohibition against any noise than exceeds limits from the property line of the noise source. Mr. Roosa said perhaps section five should be retitled to just "Sound Levels" or break it out into a separate section. Mr. Roosa said he would get a copy of the Lee County Code of Noise Enforcement Practices that is mentioned in Section 5. Mr. Reynolds said he is not sure that Lee County is still using a decibel meter. He thinks the sheriff is using a subjective reading. Mr. FitzSimons said that proving "breach of peace" may be the only thing that will stand up in court. Marsha Segal-George said that we are looking at privatizing code enforcement instead of going to the county, so the Council may not want to make it too complicated to enforce. It was decided to pull this noise ordinance until they can get more input from the sheriff.

**B TOWN OF FORT MYERS BEACH TAKING OF RECYCLABLE MATERIALS**

There was no discussion. First reading was set for July 15.

**C TOWN OF FORT MYERS BEACH COMMERCIAL WASTE DISPOSAL ORDINANCE**

There was no discussion. First reading was set for July 15.

**D TOWN OF FORT MYERS BEACH LOT MOWING ORDINANCE**

There was no discussion. First reading was set for July 15.

**E TOWN OF FORT MYERS BEACH TRANSIENT MERCHANT REGULATION ORDINANCE**

It was clarified that this ordinance will apply to beach vendors also. The only change is that the jurisdiction on appeals changes from Lee County to the town. On page 2, paragraph E, the ordinance states that you cannot sell on the right of way of any road under the town's jurisdiction. It was decided to put a period after highway and delete "under the town's jurisdiction." On page 3, paragraph I, the wording was left "Lee County" on purpose.

First reading was set for July 15.

The Council took a break at 8:20 P. M. The meeting was reconvened at 8:32 P.M.

**XII APPROVAL OF CONTRACTS**

Marsha Segal-George presented the contracts for Randy Oliver and Joyce Hester for approval. The terms are the same as discussed in an earlier meeting, but they have been placed into the document that Mr. Roosa prepared.

**Motion:** Ray Murphy moved and Ted FitzSimons seconded that these two contracts be accepted. There was no discussion. The motion passed unanimously.

Marsha Segal-George also presented the contract that was prepared by Bill Spikowski, which contains everything that is in our contract form. The contract states that some of the work will be subcontracted to Carol Cunningham and Victor Dover. Mr. Spikowski will start next week, and the contract covers July, August and September. After that, he will be covered under the new budget. She thinks the ball park figure for the consulting costs for the comp plan will be about \$200,000 (actual consulting time.) She has asked the state for some financial support or else that they provide us with some technical assistance. The LPA needs a lot of help with the traffic, surface water, and coastal aspects and also with economic feasibility. They are still planning to finish the comp plan in a year and a half. Mr. Dover will have two visioning session that will be open to the public (the first one is scheduled for July) and

there will be a public hearing on the Times Square overlay in July also. The overlay will be brought to the Council in August for approval.

**Motion:** Ted FitzSimons moved and Garr Reynolds seconded that this contract be accepted. There was no further discussion. The motion passed unanimously.

**XIII RESOLUTION ASSIGNING QUASI JUDICIAL DUTIES TO THE LOCAL PLANNING AGENCY**

Marsha Segal-George stated that this resolution represents what the Council has already discussed at a previous meeting.

**Motion:** Ted FitzSimons moved and Ray Murphy seconded that the resolution be accepted. There was no discussion. The motion passed unanimously.

**XIV RESOLUTION REQUESTING THE COUNTY RELEASE CONTINENTAL CABLEVISION FROM ITS FRANCHISE FOR THE SERVICE AREA INCLUDED WITH THE TOWN**

**Motion:** Ted moved and Garr Reynolds seconded that the resolution be accepted. The motion passed unanimously.

**Discussion:** It was pointed out that this does not mean that they will do it. It is just the next step.

**XV REVIEW OF FILE AND DISCUSSION OF OPTIONS ON GULLWING HOTEL**

Marsha Segal-George stated that the information in their packets was compiled from the County file based upon a request from the Council in a previous meeting. The staff needs to know what the Council wants them to do. Because the information was so confusing, the Council discussed whether they were understanding the data correctly. Apparently a 57-unit condominium was permitted in 1987, then a 100-unit hotel, then a 130-unit convention hotel with 150-seat restaurant. Now it is down to 100-room convention hotel with a 150-seat restaurant. Mr. FitzSimons pointed out that it has had four different zoning classifications (C1, C2, CT and RM2). The RM2 classification does not allow hotels, but RM2 used to be RU3 prior to 1978, and it did permit hotels. It did not appear to him that the permit was issued correctly. Mr. Roosa said that the Council can hold a hearing to see whether this permit should be renewed again, but Mayor Cereceda felt that was too confrontational and asked if it would be improper to talk to the owner about what his plans are before scheduling a hearing. The owner has an active valid permit that will expire on August 16, 1996, and that all the owner has to do is call for an inspection any time before then and show proof that they are making progress, and the permit will be extended. Mr. Roosa suggested inviting the county staff to come to a workshop to let us know what has to be done in order to preserve the permit (what sort of progress has to have been made), and also invite owner to attend the meeting. The staff will set up an informal meeting with county support and the owner.

**XVI REQUEST TO ALLOW TRUST FOR PUBLIC LANDS TO PREPARE GRANT APPLICATIONS FOR LAND ACQUISITION (LONG PROPERTY)**

Marsha Segal-George explained the number and types of grants that the staff is pursuing in a very short time. Don Morrow from the Trust for Public Lands said that they routinely prepare grant applications and that there are two grants that have a high probability of success for our town (The Florida Community Trust Grant and the Department of State Grant-In-Aid.) One has a deadline of early August and we would find out by December if the application was successful. The Trust will do both grant applications for \$7500. There is no guarantee that it will be successful, but if they are, they would cover the entire purchase price of the Long Property and we would not have to put up any matching money. She is also working on the Preservation 2000 Grant with the Department of Community Affairs (to be submitted by August 8), the Community Development Block Grant Funds which has a \$600,000 ceiling for the town, two state historical grants which are due in August, and the

Mainstreet application which is due the end of July. Marsha Segal-George does not feel that we can get all of these grants ready by August without help.

**Motion:** Ted FitzSimons moved and Garr Reynolds seconded that the money be made available for grant applications. There was no further discussion. The motion passed unanimously.

## **XVII COUNCIL MEMBERS' ITEMS AND REPORTS**

### **A RUSTY ISLER**

The Council has decided that the next workshop on boating will have public comment throughout the meeting. He thinks that the budget workshops should also be open to the public so they can be interactive. The Council agreed that it was a good idea and they would like to try it.

### **B ANITA CERECEDA**

Mayor Cereceda wanted to clarify her position about the sheriff asking for a letter supporting his budget. Her question is that if we don't know what the core level of service is, how do we know how much more we are responsible for if we decide that is not enough? Mayor Cereceda feels that if we are going to pay a set amount for the services of the sheriff, then we should be able to expect a set amount of services. Marsha Segal-George said that the governor has upheld the sheriff's right to do the budget the way he does, and if the voters don't like the way he is spending the taxpayers' money, their recourse is to refuse to reelect him. She said that if we have a rash of crimes, the Sheriff will send more officers at no extra charge, but if the town just wants more visible police patrolling activity, they can hire off-duty officers to do that job. Ted FitzSimons pointed out that if the town wants to, it can create their own police department, but the residents will still have to pay for the sheriff's department anyway.

## **XVIII TOWN MANAGER'S ITEMS AND REPORTS**

The Town Manager had no items to present.

## **XIX TOWN ATTORNEY'S ITEMS**

Mr. Roosa provided the Council with statements of the facts regarding Diamondhead. The Florida League of Cities has already said that they do not file these briefs unless it goes to the Supreme Court. However if Mr. Roosa prepares an amicus brief, they will review it at no charge. He needs direction from the Council whether he should proceed. He thinks that the Court will see this as a dispute between neighbors and won't see it as a weakening of power for the municipalities unless we file the brief. He feels that if the Town does not intervene, it will get rubber-stamped pro curium affirmed and the judge will not even look at. He thinks we will get a written opinion if we file an amicus brief.

**Motion:** Ted FitzSimons moved and Garr Reynolds seconded the motion that the Council direct the Town Attorney to file an amicus brief. Mayor Cereceda, Ted FitzSimons, and Garr Reynolds voted for the motion. Mr. Isler and Mr. Murphy voted no. The motion passed.

**Discussion:** So far Mr. Roosa has spent \$1300 to put the facts together and it will probably cost about \$2600 more to complete the brief. Anita Cereceda said she does not really want to fight Diamondhead but she feels like she has the opportunity to fight for a principle for the town for future development and it needs to be looked into. Rusty Isler commented that the Council just approved \$7500 on the chance that we would be successful and the town would gain a real benefit. But this is a case that has lots of little errors and it could go either way. It will just make a point of law and the town will not really benefit from it. Ted FitzSimons felt that Diamondhead was an example of the treatment of this community by Lee County and that is why we incorporated. He feels that the Council owes it to the community to take this step for the present and the future of the town. Garr Reynolds thinks the county treated the beach terribly and we should do something to stand up for our rights.

Concerning the local option gas tax, Mr. Roosa said that he has found out that the appeal will be to the Cabinet and will be held in Tallahassee. The most glaring error on the allocation system is that the Commissioners are supposed to consider the county as a whole, which they did not do, and instead entered

into unequal agreements with certain parts of the county. The Commissioners took money from the unincorporated areas and gave it to Sanibel. Since the appeal will be in Tallahassee, he wanted to know how the Council feels about hiring an attorney from Tallahassee to handle the case. The town has 30 days to appeal. Marsha Segal-George said we need to preserve our appeal rights, but not move too far until we are sure that there is no other way that this can be resolved with the County first.

**Motion:** Ted FitzSimons moved and Garr Reynolds seconded that Mr. Roosa be instructed to initiate the contact with an attorney and move toward an appeal if the county does not make a change. The motion passed with Rusty Isler voting no.

**Discussion:** Rusty Isler said that we should pursue the negotiations with the County. He thinks it is too early to hire an attorney. He thinks we will only get slightly more from the unincorporated areas, and not as much as Sanibel under any circumstances. Mr. Roosa thinks it will cost about \$5-10,000. The problem is with time—if the Council waits to see if the county will negotiate, they won't have time to contact an attorney in Tallahassee and file within the 30 days.

In regards to the Port Tax, everyone he has talked to is of the opinion that it would be an unauthorized tax. He is continuing to work on it, but it does not look very likely.

The staff has been talking about hiring a Special Master to handle traffic violations and code enforcement for the town. The town must have the blessing of the Chief Judge, but he thinks there may be some opposition by the county judges. If he can get their approval, then we would go to the County Commission to pass an ordinance creating the office, but the town would have to fund it. He thinks it would be a great benefit to the town. The Special Master would be a contractor to the town. He also has talked with the City of Sanibel to see if they are interested in sharing the special master.

**XX PUBLIC COMMENTS AND INQUIRIES**

There were no public comments.

**XXI ADJOURNMENT**

The meeting was adjourned at 10:25 P.M.

Respectfully submitted,

Peggy Salfen  
Recording Secretary