

FORT MYERS BEACH
SPECIAL MEETING: WORKSHOP ON BOATING
JULY 11, 1996
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

(Due to a failure of recording equipment, there is no audio record of the minutes until after the break in the meeting at 8:20 P.M.)

I CALL TO ORDER

The meeting was called to order by Mayor Anita Cereceda at 6:35 P.M.

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

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III DISCUSSION OF DRAFT OF ORDINANCE PACKET "D"

Because of the importance of the boating issue, it was decided to have public input at several different times during the discussion.

Mr. Reynolds mentioned that on page 7, line 30 and line 38 of the combined ordinance, there appears to be a typographical error. It says "no one under the age of 14" and on page 9, line 27 it says "no one under the age of 16". It was clarified that you cannot rent a personal watercraft before age 16, but if you own the watercraft, you can operate it at age 14. Mr. Reynolds felt that they should both be age 16. Sharon Faircloth said that she believed that it is a state law that you can operate one at 14 if you own it, but you must be 16 if you want to rent personal watercraft. But the rule at her rental establishment is that if you want to rent one at age 16, you must have a parent's signature. You can rent without a parent at age 18 because insurance requires someone over 18 to sign the liability agreement. The audience agreed with Mrs. Faircloth that that is what every vendor of the beach does.

Bill Perry of Aqua Sports said that the state is passing a law that anyone 16 and under will have to take a boating safety course before they can operate a boat, but it will go up to age 21 by the year 2000. (This will apply both to rental and privately-owned watercraft over 10 hp.) The state has grandfathered in anyone who is already operating watercraft though. He believes that the Town could follow these same rules.

Lonnie Clark, who owns some rental places and is also a captain, felt that the state is doing a prudent thing to ease this law in. He thinks that the town might want to impose an idle zone of 1000 feet from the shore (all waters within our jurisdiction) without stating what kind of watercraft. This would make it easier to enforce.

Pat Riley, representing the Southwest Marine Trade Association and who is also a master captain, wanted a clarification of page 4 of the proposed ordinance which talks about the Florida Intracoastal Waterway and the West Coast Inland Navigation District Waterway. He does not think the Intracoastal Waterway applies to Fort Myers Beach and he is not sure the West Coast Inland Navigation District Waterway even exists. He thinks we need to look at the areas of special management because they may have been picked up from the old Lee County Ordinance. Rusty Isler thought that perhaps the ordinance is referring to the newly dredged channel. We may want to change the wording to indicate "county-maintained" or "county-marked" channels. Mr. Clark also mentioned that on page 16, section 22, which talks about the safety identification card, that this would include shrimpers, commercial boats, large sailboats with an auxiliary motor, etc. He questioned if the town really wants to get into licensing.. The Coast Guard License only means that they can carry fare-paying passengers, not that they have passed a safety course. The commercial vessels that pass through here are not required by the state to have a license, although their insurance company may require it. He recommends that we drop it – if the state and the county don't require it, should the town? We have so many different kinds of vessels that it would be too

difficult to enforce. How would the town deal with out-of-state vessels? Would each operator of a boat have to have a license even if there were three or four operators on the same boat?

The Council discussed whether the ordinance should change the definition of "idle speed" or change the wording to state "slow speed." According to some members of the public audience, the term "idle speed" may be dropped statewide because it is very hard to determine because it varies by the type and size of the boat. "Slow speed" means that the gunnel is parallel to the water. You must maintain a certain speed in order to maintain steerage and that speed may produce a small wake in certain boats. Lee County's definition of "slow speed" means little or no visible wake. Jane Cechman of the Sanibel Police Marine Unit said that Sanibel's definition of idle speed is "producing no wake", and that their definition of slow speed is "any speed slow enough that the boat does not have an elevated bow."

Ted FitzSimons said that many people have contacted him saying that they do not go out on their boats on the weekends because of what they have to contend with (speeding boats, reckless driving, intimidating jet skiers, etc.) Rusty Isler pointed out that all those things are against the law already and that we do not need a new law.

Scott Dargitz expressed the opinion that what we need is enforcement of the existing laws. He never sees the sheriff or marine patrol enforcing the laws. He goes out all the time to get private boats away from his rentals. Sometimes they listen and sometimes not. If he calls the sheriff, by the time they get there, the offender has left. It would help if they had large license numbers on the side of the crafts that they could write down and turn in to the sheriff. His rental machines have to stay where he can see them, but private boats can go wherever they want to go so they are probably the ones causing the problems. He thinks if they put out some patrols and raise the fines, word will get around not to mess around on Fort Myers Beach.

Mrs. Faircloth said that the problem is not just on Fort Myers Beach; her family does not go out on weekends at Sanibel either. If any of their rentals break a rule or go out of sight, they are pulled in because they have signed that they will follow the rules, and there are no refunds. Usually they do not break the rules, but if they do, they have a chase boat and they go after them immediately. Their release form is not a standard form, but she thinks all the vendors do the same thing. They also go over to private crafts and tell them the rules and ask them to go to another area, but they can't enforce it.

Ted FitzSimons said that when you are on a road in a car, you have lanes and some reason to believe that everyone has or has had a license and a driver course and knows the rules of the road. You have no such guarantees on the water. The vendors, however, stated that since there are no lanes in the water, you at least have a place to go to get out of the way of poor drivers.

Heidi Mihailoff asked that the Council give the vendors some credit. People who are renting are looking out for their craft because they have a lot of money invested in the boats, and they can't run the risk of ruining their insurance. The people who rent the jet skis are usually tourists who are cautious because it is usually their first time on one. Even repeat business customers do not rent often enough to go wild on the boats. Her experience is that the problem is with the owners of private jet skis. Mr. FitzSimons said the two most recent fatal accidents have been between larger boats and jet skis. The jet skier usually comes out on the short end. That is why he believes there must be a greater level of education. He has been sent documents from all over the country saying that jet skis are being outlawed. Personal watercraft now comprises 1/3 of all marine sales, probably because the cost is affordable. He said that the jet vehicles are now increasing in size and power which only increases the hazard potential. If we have an education rule based on age alone, it is assuming maturity, which is not necessarily true. Private owners are not required to have insurance or read any rules so we must put this in an ordinance. We will lose our tourism if we do not have safe beaches.

Ceal Spuhler, who lives at the southern end of beach, said that there have been some close calls between the jet skis and swimmers. She feels that the problem is coming from private owners, not renters. She thinks that the only solution is through enforcement and heavy fines. She thinks the newspapers should run articles about boating safety. Is there some way we could require boaters to carry insurance? Our brochures state that we have the safest beaches in the world, and one person harmed is too many.

Anita Cereceda wondered if the town ordinance can distinguish between private and rental in our ordinance since rentals are apparently receiving some education when they rent.

Bill Perry said he has noticed less enforcement since we became a town. Some manufacturers of jet skis will donate vessels; you can put a deputy on it and it will have the effect of an unmarked patrol vessel, allowing the town to catch a lot of offenders. He said Miami has buoys to designate 500 feet

offshore. The rental vendors are required to put out 8 buoys, making a lane out to those buoys. The jet skis are required to use these lanes to get back to the shore, making it safer for swimmers. The buoys are temporary and can be taken up every night. Miami Beach is also prohibiting the newer machines with larger engines. He stated that his renters have to stay in a zone where he can see them. If they want to go in the back bay, one of his employees goes with them. They don't let them go out of sight by themselves. He believes that if you make people get a license, they will still break the rules unless you also have strict enforcement. His recommendations are that rental vendors should get buoys. The Town should get a machine from a manufacturer and put a deputy on it. The Town could even establish a review board, and if someone gets too many tickets, they would have to go before the board.

There are 25 jet ski and parasail vendors on Fort Myers Beach. The total in the whole county is 31! Ms. Cechman said Sanibel has no jet ski rentals. All jet skis on Sanibel are privately owned and they comprise 80% of their citations. Most tickets are issued for careless driving or for going into restricted areas. She considers this to be a serious problem that need enforcement. The fine on Sanibel is \$50. She patrols on regular boats, not on jet skis. She goes to the boat ramp about 10 A.M. when most of the jet skis are unloading and goes over the rules with them in order to help avoid some of the problem ahead of time.

Mr. Perry said that for each additional insured on the policy, you have to pay an additional premium. Most vendors must name the person in front of whose beach you operate, the county, and soon the town.

Pat Riley said the Lee County Waterway Advisory Commission has tried to get the commissioners to set speed limits, but they have been unable to get the laws passed. But he feels that if the local area would ask the commissioners to set speed limits in the passes, perhaps they would.

Pete Spuhler asked if jet ski operators are allowed to launch from our beach accesses. Marsha Segal-George said that according to the county (who controls the accesses), it is illegal, but it happens all the time. Code Enforcement has identified six accesses that are capable of launching boats, and they are planning to put up some kind of barrier to prevent it. She thinks that perhaps the town could require numbered stickers for jet ski rentals and for jet skis owned by island residents, but that it probably won't solve the problem because people could launch elsewhere and motor in.

Mr. Perry said the condos in his area chip in \$500 at Christmas and Spring Break and hire off-duty officers to patrol their area. It costs \$17.50 per hour to hire a deputy. If the town were to raise the fines from \$75 to \$500 for offenses such as observing idle speed zones and for coming too close to other vehicles, the town could pay for the deputies. Marsha Segal-George said that it won't help now because the fines go downtown and we get only a small percentage. However she said that the staff is looking into the possibility of hiring a special master for the town. Then the town could keep more of the fines and then perhaps the town could afford to hire a deputy for enforcement. Ms. Mihailoff said that she is afraid that such huge fines would chase off business. She suggested instead that big signs be posted stating the rules and that they are violating the rules by launching from the beach access. Since they can push their jet skis over the sand, they don't have to drive on the beach access and therefore the posts will not help the problem. Also hotels could send out a copy of the rules when they send a confirmation so they will know the rules ahead of time. She doesn't want to create more fines or more police, just greater safety through education.

The Council took a break at 8:20 P.M. The meeting was reconvened at 8:38 P.M.

Ted FitzSimons asked if the current Lee County Ordinance 90-51 is the same as page 16, line 16 of the combined ordinance that requires \$500,000 insurance per incidence and \$1,000,000 aggregate, or if the Lee County ordinance still only requires \$500,000 combined single limits. The consensus was that only \$500,000 is required under 90-51, but everyone who spoke stated that they have \$1,000,000 coverage anyway. Mr. FitzSimons thought that if we don't combine the ordinances that the town might want to modify it so that all require the higher level.

John Gucciardo recapped some of the workable suggestions from the meeting so far:

1. redefine the area of enforcement and change the language (ie: County-maintained channel markers)
2. look into modifying the definition of slow speed (look at Sanibel's definition that might be more enforceable)
3. consider having vendors place parallel buoys to make a lane for jet skis

4. look again at sections 2 through 25 dealing with licensing that are not in Lee County ordinances
5. initiate better communication with the sheriff's department or impose higher fines in order to increase enforcement
6. consider increasing the required insurance coverage

He also thought that the council needed to decide whether they want the ordinances separated or combined.

Mr. Perry stated that he is opposed to the sections dealing with licensing unless it says that the vendors can give a short instruction course to renters, which they are doing already, or give the vendors an exemption as rental operators. Otherwise, they will be out of business. He also thought that perhaps the town might look into preparing a standardized rental rule form that each renter would have to sign. His form is now available in Spanish and German (including conversion to metric measurement) and he is going to add French soon.

Ms. Faircloth inquired about section 12A, page 8, which requires a vendor to obtain a town occupational license. She wanted to know if this goes into effect, will she still have to get a Lee County license, or just a town license. She was told that only one license will be required. She thinks that the two Lee ordinances are somewhat redundant and it would be OK to combine them.

Does Lee County restrict the number of vendor licenses now? Mr. Perry said that Lee will allow more if they are zoned properly. The only restriction is that vendors cannot be within 500 feet of another vendor. He thinks there should be a cap on the number (the current vendors have asked the county and they said no). Miami only allows a certain number and new ones are put out for bid. He thinks if there are more locations, the town will begin to have problems, because of the number of jet skis. Or if the council doesn't want to limit the number of vendors, then they should consider limiting the number of craft at each location, to perhaps 5.

Gary Wicall, Fire Marshall for the Beach Fire Department, spoke about the issue from the land perspective. He sees a problem with the storage of the jet skis and with refueling. He thinks some vendors are too lax about safety. They store the jet skis under old piling houses with gas cans and no fire extinguisher. He thinks they should have to file a fire report before they could be licensed or renewed. Some vendors refuel in the water, some at water's edge, and some on the sand. All methods are OK as long as they are not spilling gas on the beach or in the water. He thinks the vendors should have fire extinguishers. The vendors are not currently required to have CPR, but he thinks that might be something to look into. The Fire Department could make the courses available.

Ms. Mihailoff spoke about people walking on seawall when the beach is too narrow. The ordinance says that you can't put a vessel in the walkway of pedestrians but it is too difficult to move the jet ski up on the seawall. Mr. FitzSimons said that it cannot be changed because that part of the beach belongs to pedestrians. She also mentioned that if a vendor doesn't operate for 30 days then their license expires. She does not think this is reasonable because someone might get sick or go overseas, or a hurricane might make you suspend operations temporarily. She suggested extending the limit to 90 days. It was explained that the 30-day rule was adopted so that vendors cannot come in just for Spring Break. Exceptions can be left up to the town manager to grant extensions or grace periods in case of extenuating circumstances.

Mr. Perry suggested that perhaps it should say in the ordinance that you can't have fuel spillage at the water's edge, and that you must use a fail-safe device. Appropriate gas cans should be specified. Currently vendors must use a metal can that has a spring so it can't spill if it overturns, but if you are operating a business from your home, you can use plastic. Metal cans leak and corrode, so they should be able to come up with a plastic can with a fail-safe device.

Ms. Cechman said that she feels the key is enforcement. Raising fines won't do any good without enforcement. If one jet skier sees another being pulled over, they will behave.

Mr. Reynolds thinks the Council should limit the number of watercraft at any business location and also require a certain number of parking spaces be available at that location.

Mr. Isler mentioned that the first ordinance basically deals with idle speed, the second with personal watercraft, the third with licensing, and the fourth one combines the other three. He doesn't think they should be combined. He thinks the first two are fine with just some minor changes. He thinks the Council is in for too many rewrites if they leave them combined. He thinks the Council should pass the Lee ordinances, and then pass new ones if they are needed to address something extra. He feels that the laws are

already there, but the enforcement is not. Education would be nice, but it doesn't keep people from breaking the rules.

Mr. Reynolds thought they don't need to be combined but he thinks the title should be "watercraft" or "boating" safety not "water safety." Mr. FitzSimons prefers the combined approach, but he thought that it still needs streamlining to eliminate overlapping areas. More important than whether it is combined is what the law says and how it is going to be enforced. Mr. Murphy did not state a preference for the combined or separated version. Mayor Cereceda felt that they should be kept separate. John Gucciardo felt that even if we keep the ordinances separate, some minor changes in language could still be made. Mr. FitzSimons suggested that when the ordinances come back, they can highlight which parts are changes.

Rusty Isler stated his opinion that any law requiring a boating safety course, should belong at the state level, not at the town level. The town doesn't have the enforcement for the rules we have now, much less licensing enforcement. Garr Reynolds stated his opinion that the town should require licensing and word will spread and people will take the courses. He enjoys boating more now that he has taken a course. Ray Murphy felt that it is the town's duty to ensure safety and the only way is through enforcement. If the manufacturers will give us vessels, then we should accept them and put enforcement officials on them. He does not believe that licensing will do it.

Marsha Segal-George said that the staff will give all these comments back to Mr. Roosa and come back to the Council with more drafts, both combined and separated.

IV SOUND SYSTEM

The Mayor thanked Rusty Isler for his efforts in getting the new sound system in workable condition before the beginning of this meeting.

V PROCLAMATION FOR CROSSWALK AWARENESS DAY

Mayor Cereceda said that she has been approached by the Bay Oaks Recreation Center's summer camp program who would like to create an annual Crosswalk Awareness Day, which would be July 18. She asked the Council if they had any objections to the Mayor creating and signing a proclamation to that effect. The campers will be at the meeting on July 15 to make the presentation. There was no objection.

VI TIMES SQUARE CRA PROJECT

Mayor Cereceda, Marsha Segal-George, and John Gucciardo finally had a meeting with the Times Square business owners. Their main concern is whether the road remains open or closed to traffic. The merchants were given the impression in the past that it would not be closed unless all merchants agreed, and even then it would be on a trial basis only to see how it would affect business and traffic. Now the county is saying that the road will close, dumpsters will be moved, and they can't have access to their property for eight months during construction, and then the road will stay closed. The merchants have had five years of bad business and they are afraid the change will harm them further. Several merchants are threatening to sue if construction is started, and if they sue, they will also sue the town. On the other hand, if we stop the project, the county says they will take the money away from us. After talking with the County Attorney, Ray Judah, and J. W. French from DOT, they all agree that that part of the road is the town's property and the county cannot say it will close. The only way it can close is if the Council votes at a public hearing to vacate the road. There will be a meeting at the Dairy Queen tomorrow morning at 8:30 A. M. to get all the affected parties together to discuss the timeline and particulars of the project. She asked the Council to verify that this is their understanding of the legalities also. The consensus of the Council was that the town should instruct the project manager that he must keep a lane open as much as possible during construction. (It was the Council's understanding that the reason the bid for construction was so high was so the road could stay open during construction.) Mayor Cereceda said that the merchants should be OK as long as they can get deliveries and have access to their parking lots and apartments. The Council also agreed that after construction the road cannot be closed unless a public hearing is held by the town. Rusty Isler mentioned the possibility that after construction is completed it would be possible to leave the road open during the day and barricade it at night into a pedestrian mall like the city of New Orleans does in the French Quarter.

VII CARL PROGRAM

Rusty Isler asked the Council to approve a letter from the mayor to the advisory council for the CARL Program urging them to maintain the high priority status of the Estero Bay buffer lands on the CARL acquisition list. (The CARL Program involves the state buying sensitive land for protection.) The County has been loose about allowing private development in the back bay and this would help protect undeveloped land on the eastern shore of the bay.

Motion: Ted moved and Rusty seconded that the mayor be directed to send out letter supporting the CARL project in the Back Bay. There was no discussion. The motion passed unanimously.

VIII SCHEDULING

A workshop meeting had been scheduled to discuss the budget on July 25, but Mr. Isler and Mr. Reynolds will be out of town. The Council agreed to move that meeting to July 18. There is also a tentative meeting scheduled for July 29. Mr. Isler will still be away on the 29th, but all other members can be present so that it will definitely be held on that date. The schedule for August will stay as scheduled.

There will be a traffic committee meeting tomorrow at 10 AM. Garr Reynolds and John Gucciardo cannot go. No other Council Members were available to attend either.

The Council has received an invitation to the Chamber's charter study committee Wednesday night at 7:00. The Council should get back with John Gucciardo if they would like to attend.

The Sanibel Congestion Pricing Committee will meet on Friday July 26 from 1-3 P.M. Garr Reynolds cannot attend so the council was asked if anyone else could go. The Council should get back with John Gucciardo if they are interested; otherwise he will see if some member of the staff can attend.

The staff has finally gotten some pricing and timing estimates from DOT for road work and drainage. John Gucciardo will have some information available for the council at the July 18 meeting.

IX ADJOURNMENT

The meeting was adjourned at 10:19 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary