

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JULY 15, 1996**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Monday, July 15, 1996, at 6:38 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 INVOCATION

The meeting was opened with a prayer by Jeanne Davis, pastor of Beach United Methodist Church.

III PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

IV PROCLAMATION OF CROSSWALK AWARENESS DAY

Mayor Cereceda read a proclamation declaring Thursday July 18 as Crosswalk Awareness Day. The proclamation was presented to members of the Bay Oaks Recreation Center summer camp who gave a presentation about crosswalk safety.

V PUBLIC COMMENTS AND INQUIRIES

A FRAN MYERS

Ms. Myers, representing the Fort Myers Beach Chamber of Commerce Mainstreet USA Project, spoke in favor of the joint project between the Chamber and the Town Council. She believes that the redevelopment projects could take over where the CRA project leaves off, and could benefit the entire island, not just the Times Square area.

VI APPROVAL OF MINUTES

A JUNE 20, 1996

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

B JUNE 27, 1996

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

VII REVIEW OF EXPENDITURES

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

VIII CONTINUATION OF PUBLIC HEARING ON MID-ISLAND MARINA

Mr. Roosa stated that on April 18, 1996, the Council met and denied the petition for a variance. On June 27 a special masters hearing was held after the petitioner had modified their plans, and the special master recommended approval of the revised application. Mr. Roosa recommended that the Council accept the recommendation of the Special Master. He stated that it was the Council's right to either accept, modify (which would not be binding on the applicant), or reject the recommendation. Beverly Grady, attorney for the Figurados, spoke to give additional information and outline the changes in the request since the first hearing. She noted that the restaurant is consistent with the comprehensive plan and necessary to the success of the business. She emphasized that Mid Island is already approved for a beer and wine restaurant

of 5200 square feet, and no further permits are necessary for this usage. However in order to alleviate the concerns of the town, they agreed to reduce the square footage to 3650 feet with 40 outdoor seats, operate the restaurant no later than 9 P. M. outside and until midnight inside, have no live entertainment or juke boxes outside (only background music), install trees along the north and south buffer zone, eliminate food and alcohol service from the tiki-hut, and dedicate ten pier slips for restaurant use only.

A MORRIS WHITBOYER

He is the historian of the FMB Yacht Club and he feels that the Mid Island Marina restaurant would encourage boating in Fort Myers Beach.

B CONNIE AMOS

Ms. Amos, an adjacent property owner, does not want this restaurant in a residential area. When she bought her property and built her house, she built next to a boatyard, never dreaming that a restaurant would become a part of that. She said that boats do not really come to this marina, and that the petitioners just want an excuse to build a restaurant.

C FRANCES HODOSH

Ms. Hodosh said that Mr. Figuerado has asked that the Council allow this so that he can preserve his investment. She asked the Council to please respect the rights of the residents who did not buy expecting to be next to a restaurant. She feels that Fort Myers Beach already has enough restaurants and drinking establishments.

D CORRI FRANCISCO

She lives across the street and says that the Figuerados have really improved the boatyard into a marina. She thinks it is better to have a restaurant where people go to eat, than a beer and wine establishment where people only go to drink. She thinks it would be an enhancement to the neighborhood.

E JACK MARKHAM

He lives nearby and feels that once beer and wine was permitted, the petitioners wanted to expand to liquor and the restaurant is the vehicle to get the liquor license. Residents bought in the area thinking they were buying next to a marina, not a restaurant. The Council voted overwhelmingly to reject this the first time because of putting a bar in a residential neighborhood. If they allow it now, it will just mushroom and they will be spending all their time hearing from other people who want to put liquor in a residential area.

F CHARLES TAYLOR

He lives at Ocean Harbor. The petitioners bought a marina with certain limitations to it, and now they are trying to do things they cannot do. It is a residential only area, and the Lee County Plan says there shall be no expansion or intrusion of business into the residential areas of Fort Myers Beach. The original license was allowed by Lee County, not this Town Council. Now the residents are looking to the Council to protect them from further incursions. He takes exception that a restaurant is necessary to the marina business since boating hours are daytime hours, and nighttime hours are for diners.

G JEAN MATTHEWS

Former Koreshans came to Fort Myers Beach in 1896 and built Marine Boatways where they sold hot dogs and had a store that sold food. The land was not founded on the premise of drinking and in fact there were no liquor licenses on island until 1932. She does not mind if people want to drink, but she does mind if they drink in her yard or get drunk and run over her property.

H DORIS BROWN

She has been a resident for 16 years. Although the Figuerados have done a marvelous job in improving the marina, she does not want a restaurant and liquor establishment going in her backyard. She also wanted to represent Greg Miller and Mike Funk who own property next door but had to be out of town tonight. They are also opposed.

I WILLIAM SHENKO JR

He is representing three clients. The issues are the same as the first time it came before the Council: are we going to permit a liquor license in a highly populated residential neighborhood. Just because Lee County thought liquor is an ancillary use to a marina, does not mean that this council has to. The key is 1) the recommendation is not binding, nor is it evidence in court; 2) it was stipulated to; and 3) if the Council agrees to it, it follows the land forever, no matter who owns the land in the future. This cannot be undone. The residential use should be protected.

Beverly Grady clarified some points. The existing beer and wine permit cannot be revoked.

The comp plan charges the Council to protect marinas. Marinas are permitted in the FM2, and a restaurant is a permitted use in a marina. They are coming back to the Town Council because the Figuerados don't want a restaurant on Estero, they want a restaurant that will support the marina. They have asked for the minimum size for a full-service restaurant with a liquor license. She asked the Council to recognize the benefit of not having the restaurant on Estero, which they are permitted to do.

The public hearing was closed.

Mr. Roosa presented the Council with two resolutions, one accepting the request and one denying the request.

Motion: Ted FitzSimons moved and Rusty Isler seconded that the Council accept the resolution denying the request. Mr. FitzSimons, Mr. Isler, and Mr. Reynolds voted for the motion. Mayor Cereceda and Mr. Murphy voted against the motion. The motion passed.

Discussion: Mayor Cereceda cautioned the area residents not to have the unreasonable expectation that if the Council denies this, that there will never be a restaurant in this area. They are permitted now for an 1800' restaurant with beer and wine and tiki huts and that can go in tomorrow and the Council can do nothing about it. Mr. Roosa verified that the petitioners could build a 5000' restaurant elsewhere on the property. The marina is surrounded by residential area, but it is zoned for a marina. This has to be a water-dependent use if the restaurant is built at the marina, but not if it is built elsewhere on the property.

Mr. FitzSimons mentioned that while the land code allows certain uses, it does not require those uses, and he thinks the Council should preserve the neighborhoods as much as possible. Mr. Murphy said that a bar has already been approved and the Council must decide whether to put that bar inside a restaurant and put some food in the people who are drinking, or to leave it outside in the tiki huts. He understands the concerns of the adjacent property owners, but he thinks they will be getting an improvement by putting the drinking inside. Mr. Reynolds reiterated that how they vote will affect not only the neighbors but the entire island and he does not believe a restaurant and bar should be established in a residential neighborhood. Mayor Cereceda said that if you have something that is going to happen anyway, you might as well make the best option of it, which she believes is an upscale restaurant rather than an outside beer and wine establishment. Mr. Isler thinks that the water dependent use was put in to protect marinas. He thinks if they put in the restaurant, the focus and the resources of the petitioners will be transferred from the marina to the restaurant. If the Council wants to preserve the marina, they need to put their resources into the marina.

The Council took a break at 8:27 and reconvened at 8:39 P.M.

IX PUBLIC HEARING ON ORDINANCE PACKET "D"

A. THE TOWN OF FORT MYERS BEACH CONVENIENCE STORE SECURITY ORDINANCE

Mayor Cereceda read the titles of the ordinance and opened the meeting for public comment. There being no comment, the public hearing was closed. Ray Murphy moved and Garr Reynolds seconded the motion that the ordinance be accepted. There being no discussion, the motion passed unanimously.

X FIRST READING OF ORDINANCE PACKET "E"

A THE TOWN OF FORT MYERS BEACH TAKING OF RECYCLABLE MATERIALS ORDINANCE

Mayor Cereceda read the titles. There was no discussion. The ordinance was set for public hearing on July 29, 1996.

B THE TOWN OF FORT MYERS BEACH COMMERCIAL WASTE DISPOSAL ORDINANCE

Mayor Cereceda read the titles. There was no discussion. The ordinance was set for public hearing on July 29, 1996.

C THE TOWN OF FORT MYERS BEACH LOT MOWING ORDINANCE

Mayor Cereceda read the titles. There was no discussion. The ordinance was set for public hearing on July 29, 1996.

D THE TOWN OF FORT MYERS BEACH TRANSIENT MERCHANT REGULATION ORDINANCE

Mayor Cereceda read the titles. There was no discussion. The ordinance was set for public hearing on July 29, 1996.

XI DISCUSSION OF DRAFT OF ORDINANCE PACKET "F"

A THE TOWN OF FORT MYERS BEACH TWO WHEELED MOTOR DRIVEN VEHICLE ORDINANCE

There was no discussion.

B THE TOWN OF FORT MYERS BEACH PARKING VEHICLES ORDINANCE

There was no discussion.

C THE TOWN OF FORT MYERS BEACH TOWING OF PARKED VEHICLES ORDINANCE

Mayor Cereceda asked that this ordinance be pulled and discussed at a workshop since it is very important on this island, and especially since the CRA project will probably make the parking problem worse. The Council agreed to pull it from discussion until a later date. It was suggested that the towing company and the reporter from WINK TV (Jack Fink) should be invited. The Council agreed.

XII DISCUSSION OF JOINT VENTURE WITH CHAMBER FOR MAINSTREET USA PROJECT

Marsha Segal-George told the Council that this is a program that is run through the Secretary of State's office which tries to get communities the technical assistance they need to succeed in their revitalization programs. They can help the town find money, and it is worth at least 10 points on any grant application. She would like to make this a joint venture with the Chamber. The application has to be postmarked by July 26, and the presentation has to be made on August 15 in Winter Haven.. This would require the town and the chamber to make a commitment of three years. They would need to commit to \$30,000 each (the town in cash and the chamber in kind.) There would need to be a full time person, but they could work for the Downtown Redevelopment Authority, not the Town or the Chamber. They would delay beginning any programs until April 1997 after the CRA project is completed. We would have to budget a portion of the \$30,000 from April to October, and the rest could be over three years.

Mayor Cereceda feels that this is the perfect jumping off point from the CRA project to any more redevelopment. Mr. Murphy spoke about the main street of Del Ray Beach which is vibrant now after their Mainstreet program. Mr. Isler thinks Mainstreet sounds good, but not committing \$30,000 in exchange for some expertise. He thinks the Town should wait until the CRA is finished and see how it looks first, because he doesn't know what area needs it most without further study. He thinks next year might be the proper year to apply for it.

Motion: Mayor Cereceda moved and Ted FitzSimons seconded that the Town enter into a joint venture with the Chamber to apply for the Mainstreet USA designation. Mayor Cereceda, Mr. Murphy and Mr. FitzSimons voted for the motion. Mr. Reynolds and Mr. Isler voted against the motion. The motion passed.

XIII APPROVAL OF CONTRACT FOR LORRAINE CALHOUN

Motion: Ted FitzSimons moved and Ray Murphy seconded that the contract be approved. The motion passed unanimously.

Discussion: Mr. Reynolds had talked with an insurance agent, and expressed concern about whether she would be covered if she gets injured in the building. The contract does not state that she will pay workers compensation in case she hires someone else. He is afraid that during audits, this will be

picked up and the Town will have to pay workers comp. Mr. Roosa thought that the contract is clear that she is a contract employee and the contract clearly states that she will have to carry public liability insurance acceptable to the Town. He suggested getting the town's insurance agent to look at the contract and if it does not look OK to them, we will redo the contract. Since we have used this form before, he recommended accepting it while town looks at the contract for all employees.

XIV COUNCIL MEMBERS' ITEMS

A ANITA CERECEDA

She thanked the Council again for their help in solving the problem with the CRA project. The groundbreaking is tomorrow at 9:00 AM, and she asked all of the Council members if they would be willing to speak at the ceremony.

XV TOWN MANAGER'S ITEMS

Marsha Segal-George reminded the Council that Victor Dover would be speaking at the LPA tomorrow night at 7:00 P.M. and she invited all Council Members to attend.

XVI TOWN ATTORNEY'S ITEMS

Mr. Roosa gave a monthly update on what he is working on.

In reference to the Gas tax allocation appeal, they are still waiting on some action from the county. (Tallahassee says they have never had an appeal on the gas tax allocation.)

The CRA letter was sent to the County Attorney on May 22.

The Haskell /Sunstream appeal has been filed. Sunstream opposed the filing of the appeal and filed a motion.

In reference to the port fee ordinance, the general consensus is that it would be an unlawful tax and he does not recommend going forward with this. Apparently the cruise lines are now calling them service charges.

In reference to the traffic hearing officer on the island, Judge Starnes is in favor, but he didn't think the county judges would be. He talked to two of them and the consensus is that if there is a need to have hearings on the island, they could have a county judge come here if we provide the facilities. That would broaden the scope, so that criminal offenses such as DUI could be heard here also. Judge Starnes will pursue it. We would also need the approval of the Chief Justice of the Supreme Court of the State of Florida. Then the county would have to create the office. He thinks we could get Sanibel to join and also broaden the job to include code enforcement. Mr. Reynolds distributed a letter from Robert Williams who is willing to help the town as a Public Safety Officer.

XVII PUBLIC COMMENTS AND INQUIRIES

There were no public comments.

XVIII ADJOURNMENT

The meeting was adjourned at 9:38 P.M.

Respectfully submitted,

Peggy Salfen
Recording Secretary