

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

I CALL TO ORDER

The meeting was opened on Tuesday, September 3, 1996, at 6:35 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 invocation was given by the Reverend Dr. Ronald Paul Salfen, pastor of Chapel By The Sea Presbyterian Church.

III PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

IV PUBLIC COMMENTS AND INQUIRIES

There were no public comments and inquiries.

V APPROVAL OF MINUTES: AUGUST 19, 1996 AND AUGUST 22, 1996

Motion: Mr. Isler moved and Mr. FitzSimons seconded that the minutes be approved as submitted. The motion passed unanimously.

VI REVIEW OF EXPENDITURES

Regarding the bill for the handicap accessible ramp, it was clarified that this bill is lower than projected because the original bid was for precast concrete. Nations Bank did not want to pay that much because the Town is taking it out of our rent payments. In addition to this bill, \$500 has already been paid for the plans.

Regarding the copier lease, the Council wanted to know whether this included free copies and whether the staff was keeping a record of the meter count.

Regarding the bill for Joyce Hester, it was explained that the Town is only paying part of the invoice because there is still a dispute on part of bill.

Regarding the bill for Sea Mist, it was clarified that the contract is for \$15.00 per hour and does not specify how many hours will be needed each week.

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that the expenditures be approved. The motion passed unanimously.

VII PUBLIC HEARING ON TIMES SQUARE OVERLAY ORDINANCE

Mayor Cereceda read the titles. The public meeting was opened.

A BRIAN SCANLON

Mr. Scanlon stated that there are wonderful ideas in plan, but he is worried about the parking issue. The number one problem in Times Square is parking which in turn causes traffic circulation problems as people drive in circles looking for a parking spot. According to the plan, buildings can be moved closer to the street on North San Carlos Blvd., if they move parking to behind the buildings. Unless everyone moves out at the same time, there will be no way to get to the parking behind the buildings. Also, if you allow the buildings to be built higher, you are going to add a lot more density, and apartment residents will need parking.

B JOHANNA CAMPBELL

She encouraged the Council to have another study done on the parking issue since the original study said that there was no problem with parking. She also wants the Town to get with LeeTran about better transportation. There is a parking lot on other side of the sky bridge, but it needs more and better transportation to be usable.

C RAY MERTENS

Mr. Mertens is concerned because there is a great deal of money being spent on business without requiring that they give something back. The plan is great and Times square will be a vital part, but if we can't get the businesses to cooperate, maybe we should switch the help to the south end. He questioned how they can be upset since it is free money. He also mentioned that 3.2 million dollars is being spent on the Times Square project, but there is zero in the budget for kids, so he questions the priorities of the Town. Mayor Cereceda pointed out that the CRA project has nothing to do with our budget, because it is CRA money from the county.

D LENA HEYMAN

Mrs. Heyman hopes the Council will consider making Times Square a pedestrian walk. The overlay allows businesses to have umbrellas and go out to the road, and she is afraid that someone will get hit by a car coming around the corner.

There being no further comment, the public hearing was closed.

Mr. Reynolds agreed that when that much money is spent on business, the Town should expect some concessions back from the businesses. The parking, solution should be a combined effort or totally business, not just the Town. He thinks it is clear from the study that there is no shortage of parking, but the problem is use. Two months of the year there is a parking problem, but that may not be worth the expense. He encouraged the audience to see the video of the Victor Dover presentation.

Mr. FitzSimons still has reservations about the voluntary nature of the overlay, and he noted that the recommendation of the company that drew up the overlay is that it be mandatory. But it is better to be voluntary than to have no overlay at all.

It was clarified that once the ordinance passes, business could start building immediately. There will be design guidelines passed by ordinance soon. When someone starts to build, the Town will negotiate individually with the business regarding parking until the Town comes up with a permanent plan. It will probably be some kind of off-site parking lot where they can buy rights to parking for their customers. The overlay does not waive parking requirements, but just makes them more flexible. If someone opts not to go under the overlay, they will have to provide parking under the existing zoning.

The Town will have to work around people who don't want to join the plan until they see that it is in their best interests. There is a lot of excitement and people want to do something, and the town shouldn't hinder any of the enthusiasm. Mayor Cereceda wanted to clear up that the overlay only addresses zoning, and involves no money from the town. It only enables people to make improvements and encourages redevelopment.

Motion: Mayor Cereceda moved and Ray Murphy seconded that the ordinance be approved. The motion passed unanimously.

VIII PUBLIC HEARING ON POST-DISASTER ORDINANCE

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

It was clarified that if there was an evacuation, access back to the island would be controlled by the sheriff's department. Their criteria is a photo ID that shows residence on the island. Because many business owners are not island residents, the Chamber is organizing some form of ID to prove that they need to get back on the island. The Town has set up a post-disaster assessment team consisting of the staff, the LPA and the Council. They would be assigned parts of the island and would assess damage on the island. They are being issued separate picture IDs by the Town.

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

IX FIRST READING OF ORDINANCE TO ESTABLISH AND LEVY AD VALOREM TAXES

Mayor Cereceda read the titles. The public hearing was set for September 16, 1996.

X FIRST READING OF OCCUPATIONAL LICENSE ORDINANCE

Mayor Cereceda read the titles. The public hearing was set for September 16, 1996.

XI FIRST READING OF THE BUDGET ORDINANCE

Mayor Cereceda read the titles. The public hearing was set for September 16, 1996.

XI ENGAGEMENT LETTER, TOWN AUDITOR

Mr. Gucciardo said that Schultz Chaipel & Co. cannot commit to a quotation for the 1996-1997 audit since no one really knows how much will be involved. That fee will be negotiated next summer.

Mr. FitzSimons noted that the letter says they will verify the books, but not guarantee that the internal control structure is in place. They may have recommendations on improving our structure, and he thinks the Town should take advantage of their suggestions, even if it costs the Town more.

Since there was no objection, the Council authorized the Town Manager to sign the letter of engagement.

XII FIRST PUBLIC HEARING ON THE BUDGET

Mayor Cereceda opened the public hearing.

A ELLIE BUNTING

Mrs. Bunting wanted to commend the Council for including Community Service in the budget. She feels that it will help centralize the services that the community needs and fill in the gaps. It can be a clearinghouse to help everyone.

B HAROLD HUBER

Mr. Huber wanted clarification of the \$200,000 repayment of loan. He was told that it was for the Long property, assuming that it is purchased by the Town.

C FLIP HARBY

Mr. Harby wanted to know why the Town changed the original hearing dates. Now there are only 13 days between hearings. He also wanted to know if there is a plan on file that can be scrutinized regarding sidewalks, bike paths, etc.? He also mentioned that Travel and Training sounds like we are paying for continuing education. He would like to see it broken out because he thinks that is covered in Marsha Segal-George's contract. He stated that Municipal Utility Tax involves \$250,000 for a town that doesn't need the money or the additional tax. He hears that the County is not going to pursue the utility tax this year.

Marsha Segal-George replied that our budget is not planning on the tax for this year either, because it wouldn't begin until January. The Town's latest information is that the county is still pursuing it, but is not in place yet.

D RAY MERTENS

Mr. Mertens feels that \$15,000 for travel and training is too low. The Town staff and Council need to get out and network. You need to meet people to get state and federal funding. If we are going to be town, we might as well be the best, and that requires training. The purchase of the Long Property is fine because we all learn from history, but there is no money allocated for kids. There is \$30,000 for community service, but there is no guarantee that it won't all go for people over age 30. He wants \$100,000 for kids. He thinks we must have the municipal utility tax so we can have money for kids, cash flow, and reserves. He would break it down into \$50,000 for the contingency fund for a future park district and \$1500 for boating safety for children, \$1000 for bicycle safety, \$1000 for fire safety. He wants teen dances that have uniformed security, etc.

E JENNIFER KESSNER

Ms. Kessner wanted to speak for keeping Community Services in the budget. She agrees that we must make the County continue to provide services that we are paying for. But there are gaps, such as sports organizations, Scouting, Ostego Bay, that are not covered in any existing government budget. Since we are a small community, the same people are trying to raise money for all these things. Community Service money can further

enhance programs that are already in place. This can also help support community events, meals on wheels, etc. The money doesn't have to be spent, but it should be in the budget so that the vehicle is in place.

F BILL SHENKO

Mr. Shenko wanted to thank the Council and staff for nine months of hard work to put budget together. Everyone will not agree on all the line items, but they can agree that there are five people that live and work on this island worrying about the problems and solutions on the island.

H LORRAINE ALVINO-HINCKLEY

Ms. Hinckley has just returned to the island. She comes from Miami and has seen what not allocating money for children can do. At least 50% of the money allocated for Community Service should go for the children. If something happens with Lee County we will have something to fall back on.

Mr. Isler commented that there are three projects which relate to children: the future of Bay Oaks, the pool, and extending and upgrading sidewalks. You can't just measure commitment to youth by the dollars that are in the budget. The Council can continue to support the efforts of the volunteers working on the pool, the Town Manager can continue to influence the County to continue to operate Bay Oaks, and the Council can commit to the sidewalk project.

Mayor Cereceda commented that there is a difference between campaigning and governing. The Council members were elected to make decisions. The only input the Council has heard is about the children. She asked for more public input, especially about the municipal utility tax. Mr. Mertens mentioned that the tax only means about 10 cents per day per household in order to support youth.

Mr. Reynolds said that all the council members said no new taxes, and it has been proved we can run the budget on no new taxes. Some residents may have changed their mind and want a new tax so that we can do more for youth and contingency, but that's not what he promised and he is going to stand by it. He thinks it should go to a vote of the public if we want to impose a new tax, but he doesn't see a need for it. Mr. Roosa is preparing an ordinance to reserve the rights of the Town to those taxes for the future.

H KAREN SWANBECK

Mrs. Swanbeck was for incorporation, and everyone agreed that the Town could operate without an additional tax and it still can. But incorporation has allowed the residents to have a vision for the Town, and she has changed her mind. She would be happy to pay the municipal utility tax if it will allow the Town to do something extra, like youth, the Long property, etc. She thinks there are many other people who agree with her.

I FRANCES HODOSH

Mrs. Hodosh agreed with Mr. Reynolds that it was a major point of incorporation and the election that there would be no new taxes, and the Council needs to hold to it. The Council can't agree to do everything at once until it gets its feet on the ground, and she thinks the Town is progressing with youth. She does want to see the Long Estate because it will benefit young and old and future generations.

Mr. Harby mentioned that the municipal utility tax is about \$250,000. The Town has already saved \$244,000 by getting CCommunity Development reduced, and they have saved \$40,000 in Capital Improvements. Therefore the Town has already generated revenue in the revised budget without adding a tax.

Mr. Mertens mentioned that there is no money in the budget for the pool, and there are no bids in process for sidewalks, landscaping, etc., so it is misleading that we are spending money on youth.

The public hearing was closed. There will be one more workshop on September 12 before the final budget hearing on September 16. Mayor Cereceda encouraged everyone to get a copy of the budget, call the Council Members, write letters, and let them know what they think.

John Gucciardo handed out a letter on an item in the budget, the First Union loan of \$500,000. The money is invested in Tallahassee, and is generating interest income which has more than offset the loan origination fee. First Union had indicated that the loan could be rolled over without having to pay another \$4000 origination fee. But now their attorneys say we will have to pay off the loan, take out a new loan, and pay the fee again. The bottom line is that if we stay with First Union, it still won't cost the town, but the Town won't make much money. Mr. Roosa will talk to their attorneys to see how firm that is, because we have established financial responsibility and could pay off the loan so he can't imagine that it would cost the same amount this time around. The staff will look at other alternatives and bring it back to the Council at the workshop. The staff was looking at this as our working

capital reserves. Without this we will have to be much more careful about cash flow and build up a reserve. Marsha Segal-George wants to create a reserve and also keep the money in Tallahassee as a two-step reserve.

Mr. FitzSimons said the Town should act as a resource for solutions to problems in the Town. To do this, it has to be financially responsible. They must have a budget that they know will get us through the year. There are a lot of foggy things out there. A number of things were anticipated in the incorporation study, but some were not, such as losing the cable franchise fee. If we err on the side of over-revenue, that is good because it can always be used for reserves. If we under-revenue, we all suffer. As it stands now, everyone's tax bill will be lower than if we had not incorporated. If we pass the municipal utility tax, it will only cost a few dollars more and will be well spread over the community of users. If utility bills are too much for someone to handle, they can apply to FPL for help.

Mr. Reynolds said we didn't become a town just to collect and spend money. We can do things to help people of the community without money, by going through channels already in place.

The council took a break at 9:35 P.M. and reconvened at 9:50 P.M.

XIII COUNCIL MEMBERS' ITEMS AND AGENDAS

There were no items.

XIV TOWN MANAGER'S ITEMS AND AGENDA

A DEEP WELL INJECTION

Marsha Segal-George reported that she had talked with Glenn Greer, with a hydrologist, and with the project engineer about the proposed deep well injection at the Fort Myers Beach sewage treatment plant. The plan is scheduled to come before the commissioners tomorrow. She asked the Council if they wanted her to do anything or to take a position on the matter.

Mr. Chris Bundschu, an engineer and consultant on deep well injection, answered some questions about the well. It would go 2500 to 3000 feet to the boulder zone, far below any usable aquifers. The capacity of the well is unlimited, but it would only be used in the rainy season. In Florida there has never been an injection well that has polluted the water supply. It is the same effluent that you would put on lawns, but he questioned whether it would be more dangerous to the environment if it is dumped in the river, sprayed on your lawn where it eventually reaches the water table, or pumped and stored 3000 feet down. Council members expressed a fear that it could leak upward to a supply that we would want to use some day for drinking water, but he thinks it would be so pure by then that it would not be a problem. The treated water displaces water in the boulder zone, which is a very cavernous region, but the treated water probably only goes out about a mile in diameter. The well will be cased all the way to the boulder zone, and they have to prove confinement. It will cost approximately 3 million dollars to build. The Council decided that they would not take a stand at the Commissioners meeting but they would like to let the DEP know that the Council wants to be kept informed.

B LETTER FROM DIAMONDHEAD (SUNSTREAM)

Marsha Segal-George reported that Sunstream contacted the staff and wanted to talk about possible alternatives. They presented 4 -5 options and the meetings opened a dialogue on ways not to have a litigious relationship. The immediate issue concerns their building permits. While litigation is ongoing, they would like to keep conversations going, but they are concerned that their permits will expire. Without assurances from the Council, they will have to do substantial work on their site within the next two weeks, which would be the piling work for the convention hotel with the parking deck. That will determine what they will build if they are successful in court because they will have invested so much money in the pilings. The Town would like to see something less obtrusive on that lot, especially without the parking deck, because it is so massive and tall for the site and blocks some of the neighboring landowners. This would buy the Town and Sunstream some time.

Mr. Roosa recommended taking no action because this is a land use matter that has not been looked at by the LPA. Also the language indicates they are looking for recognition by the Town that they have valid permits. That is a benefit to them even if the courts rule that their permit is invalid. Also the letter is not from their attorney. He thinks it is adversarial conduct.

Mr. Isler said that he thinks all their new plans are still too dense for the site.

Mr. Murphy felt that they are coming in the spirit of negotiation, but they just want some assurances in return.

Mr. FitzSimons questioned if there was a way to approve therequest without recognizing the validity of the permits.

Mr. Reynolds did not think it is to our benefit to talk to them. The Council told the public that they would stay out of this until the courts decide, and that they should follow their attorney's advice.

John Gucciardo does not think it was the intent of the letter to trick the town into validating the permits. He thinks it would be OK with Sunstream if the Council stated they weren't validating the permits. He thinks their desire is to keep both sides from being pushed into any decisions based on time. Sunstream said that in the past the county has not required construction to begin during litigation. He feels they just want the same assurance from the Town.

Mr. Roosa said that just before incorporation, there were many permits issued. If the Council takes the position that all permits that were issued before incorporation and are subject to litigation would not be required to commence construction until 90 days after the final order, then it would be universal and would not address the validity of any particular permit. In his opinion this would not create an estoppel.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the Council approve a policy that the requirement to commence construction within one year of the issuance of the permit will not be required of any permit issued prior to incorporation that is in litigation, until 90 days after final resolution by the courts. Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Murphy voted for the motion. Mr. Reynolds voted against the motion. The motion passed.

XV TOWN ATTORNEY'S ITEMS

There were no items.

XVI PUBLIC COMMENT AND INQUIRY

There was not public comment.

XVII ADJOURNMENT

The meeting was adjourned at 10:45 P.M.

Respectfully submitted,

Peggy Salfen
Recording Secretary

From the minutes of September 16, 1996:

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Mr. Reynolds wanted to clarify that the photo ID required by the Sheriff's department is not a special ID to be issued by the Town. Any photo ID such as a driver's license which shows residence can be used.