

**FORT MYERS BEACH
TOWN COUNCIL MEETING
SEPTEMBER 30, 1996**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Monday, September 30, 1996, at 6:30 P.M. by Anita Cereceda, Mayor.

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; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

Mayor Cereceda gave the invocation.

IV PUBLIC COMMENTS AND INQUIRIES

A BOB GAYDOS

A few weeks ago he spoke about a problem with construction trash in his area. It has been fixed now and he thanked the Council for their help.

V APPROVAL OF MINUTES FROM SEPTEMBER 10, 12, AND 16, 1996

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the minutes of September 10 be approved as read. There was no discussion. The motion passed unanimously.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the minutes of September 12 be approved as read. There was no discussion. The motion passed unanimously.

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that the minutes of September 16 be approved as read. There was no discussion. The motion passed unanimously.

VI REVIEW OF EXPENDITURES

Mr. Roosa clarified that the bill for Mr. Barker is for his part as hearing officer in the Nyman case. He is independent and does not represent either party, therefore the Town is only liable for half of his bill. The hearing is still in process, and this is an interim billing.

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

VII PUBLIC HEARING OF NOISE CONTROL ORDINANCE

Mayor Cereceda read the titles then opened the public hearing.

Larry Ihnan asked if it was still true that this ordinance would be looked at again in October. He was told that was correct.

Ray Mertens mentioned again that the Town should pursue using disorderly conduct instead of decibel readings. He has recently done that against the Bridge, the manager was arrested and since then the noise has been significantly reduced. It was effective, and he thinks the Council will be spinning their wheels in paperwork if they try to make other rules. A disorderly conduct charge causes an automatic court date, and the officer only had to evaluate the scene and make a judgment on the spot.

The public hearing was closed.

Mr. Roosa clarified the hours of rubbish collection. The franchise agreement limits them to beginning no earlier than 6 AM, so in this ordinance, they were listed as an exempt activity (Section 6d).

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

VIII PUBLIC HEARING ON LPA ORDINANCE AMENDMENT

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

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the ordinance be adopted. There was no further discussion. The motion passed unanimously.

Mr. Roosa passed out copies of the very first Town of Fort Myers Beach Code of Ordinances.

IX RESOLUTION ADOPTING SECTION ONE OF THE ADMINISTRATIVE CODE DESIGNATING DESIGN GUIDELINES FOR TIMES SQUARE OVERLAY

Marsha Segal-George stated that this takes the design guidelines from the Overlay and puts them into an administrative code. This is the first section of the Town's Administrative Code and can be modified by resolution.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that the resolution be adopted. There was no further discussion. The motion passed unanimously.

X CONTRACT WITH HUMANE SOCIETY FOR ANIMAL CONTROL SERVICES

This item was pulled since the document has not been received.

XI INTERLOCAL WITH LEE COUNTY FOR COMMUNITY DEVELOPMENT SERVICES

Marsha Segal-George stated that this is the \$82,000 that was already passed in the budget. The Town will be paying quarterly which will reserve our right to pull out of the interlocal in case it doesn't work. The County will assign certain people in each department who will handle the work of the Town. The County is to keep the Town informed about whatever is being handled by the County on behalf of the Town. The staff is going to have a technical meeting with them about the overlay so they will understand what is involved with that area.

Mr. FitzSimons asked about the wording of "delegate certain powers, duties, authorities to the County". He thought the authority was to be with the Town because we want ultimate control. Mr. Roosa said the County needs the authority to act as the Town's agent but we will still have the control.

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

XII INTERLOCAL WITH LEE COUNTY FOR CO-APPLICANTS ON NPDES PERMIT

Marsha Segal-George stated that this interlocal has already been passed once, but some changes have been made so the Council needs to re-ratify the document with the stated changes.

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that the Council ratify the changes. The motion passed unanimously.

XIII INTERLOCAL WITH LEE COUNTY FOR STREET MAINTENANCE

Marsha Segal-George stated that this agreement is different because there is no gross sum of money. It will be based on time and demand. The staff thinks the Town will want to look into private firms to do these jobs in a more timely and less expensive way than the County, but this interlocal allows us to use the County for these jobs if needed. It is stated in Exhibit A on the back that it is not exclusive. In case of emergencies, residents can still call DOT, but otherwise all work will be done through the Town.

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

XIV RESOLUTION AUTHORIZING INTERLOCAL FOR REORGANIZATION OF THE LEE COUNTY METROPOLITAN PLANNING ORGANIZATION

Marsha Segal-George stated that this reorganization is necessary because the Town of Fort Myers Beach is being added. Mr. Reynolds is the appointee to the MPO, and Mayor Cereceda agreed to be the new alternate. They also would like to Town to appoint someone to the TAC, but since that is a technical position, no one on the Council or staff felt qualified to accept the appointment. Mr. Gaydos agreed to be the Town's appointee to the CAC. (Lena Heyman is already the appointee from District 3.)

Motion: Mr. Reynolds moved and Mr. FitzSimons seconded that the resolution be adopted. The motion passed unanimously.

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that Garr Reynolds be reconfirmed as MPO representative, Anita Cereceda be appointed as alternate, and Bob Gaydos be appointed to the CAC. The motion passed unanimously.

XV COUNCIL MEMBERS' ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy had no items.

B RUSTY ISLER

Mr. Isler reported that a blue sheet has gone to the BOCC for the County to acquire the land for the pool and adopt funding which uses Community Park Impact Fees to provide design and construction. The Town staff has drafted a letter for the mayor to sign to support the recommendation and the Council approved sending the letter. The Council had a question about the site that was mentioned in the blue sheet. The pool group should be asked to come to the Council to make a report.

He suggested that the LPA be an agenda item at the Council's regular meetings to give an update on what they are doing. Marsha Segal-George will ask the LPA if they will do this.

C GARR REYNOLDS

Some tree trimming is needed, but Bill Nichols said it would be much cheaper to get an outside bid. Mr. Reynolds recommended that John Gucciardo get quotes from three companies and proceed with the tree trimming. The bids would be done per job and they will try to use local companies. The Council agreed to authorize the work after three bids.

A suit has been filed against the developer to settle the drainage dispute at Ocean Harbor. Southwest Florida Water Management will not do anything until it is settled in court. Marsha Segal-George suggested that perhaps the Town can approach it through code enforcement since the developer was not in compliance with the plans that were filed with the County and therefore they can be fined.

On Indian Bayou, Lauder and Lanark, there is a disagreement where the easement is and therefore the staff is hesitant to require property owners to clear out the easement. The County feels that a better approach is to run drainage along Lauder to Dundee. It would last longer than clearing ditches and is on public right-of-way. Mr. Isler is afraid that this will just shift the problem from one street to another. The Council decided to put off a decision until the October 21 when John Gucciardo will be back.

D TED FITZSIMONS

Mr. FitzSimons asked if the Town has the option of not participating in master's hearings anymore. Mr. Roosa said it is a new procedure and he is not sure we can refuse the proceeding. But he thinks it is helpful for the Town, because decisions by courts are not always in our best interests, but the special master process gives more control to the Town Manager and Town Attorney to benefit the Town. It is cheaper than litigation, and it allows the two parties to explore alternatives to address concerns of the Council. Just because the Council doesn't change their mind, that doesn't mean it was not a good process. He mentioned that in the Figuerado case, he has filed a response and also a cross-claim.

Mr. FitzSimons mentioned a document from R. J. McCormack which laid out some alternatives that had been discussed between Mr. FitzSimons, the staff, and the Diamondhead representatives. Sunstream has looked at the Times Square overlay and essentially they have decided that the overlay does not help their objectives. Sunstream does not want to consider the 80-unit condominium

any more because it doesn't conform with the County or Town plans and they would need a variance. Mr. Isler mentioned that it appears that one of the reasons Sunstream is rejecting the overlay is because they don't think it allows enough parking. Mayor Cereceda mentioned that this document is essentially an elaboration of the earlier memo. Mr. FitzSimons said there will be further meetings with Diamondhead.

E MAYOR CERECEDA

Mayor Cereceda suggested that Council Members' Items and Reports be moved to an earlier slot in the agenda. It was agreed to try putting it right after expenditures.

She is sending a letter to the Chamber of Commerce Charter Review Committee thanking them for their work.

A letter is being sent to the Corps of Engineers stating that the Town wants to be kept informed of any decisions which relate to the Lee County Shore Protection Plan.

XVI TOWN MANAGER'S ITEMS AND REPORTS

On October 21, there will be three land use hearings that must be done during the day because of County staff. The meeting will begin at 3 PM and afterwards the Council will move into the regular meeting.

XVII TOWN ATTORNEY'S ITEMS

Mr. Roosa reported that he received a letter from the attorney who represents Diamondhead asking for a clarification of the Town policy stating that construction must begin with 90 days after an appeal. Mr. Roosa recommended that the 90 days begin from the day the ruling of the appellate court is handed down. If there is a further appeal filed, then the permit would be extended again during that appeal. The Council agreed to the clarification of the policy and authorized Mr. Roosa to communicate that to the attorney.

Steve Carta has offered to give a seminar on government-in-the-sunshine. Mr. Roosa recommends that the Town Manager schedule this later for the Council and the LPA.

XVIII PUBLIC COMMENT AND INQUIRY

A BILL WHITAKER

Mr. Whitaker asked what an administrative code is. Marsha Segal-George answered that it is like the code of ordinances and is binding. He also asked some questions about the overlay.

B RAY MERTENS

Mr. Mertens reported that 22 people parked in his lot while they were at Dusseldorf's for Oktoberfest. He feels that if a business elects to have a special event permit, they should have to prove that they have made provision for the extra parking needed. Their event should not be a burden on anyone else.

XIX ADJOURNMENT

The meeting was adjourned at 8:35 P.M.

Respectfully submitted,

Peggy Salfen
Recording Secretary