

**FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 21, 1996**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Monday, October 21, 1996, at 3:05 P.M. by Anita T. Cereceda, Mayor.

Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

Excused from the meeting: Ted FitzSimons, Vice Mayor and Council Member

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The meeting was opened with prayer by The Reverend Orm Hampton, Parish Associate of Chapel By The Sea Presbyterian Church.

IV PROCLAMATION ON THE UNITED WAY

Mayor Cereceda read the proclamation and presented it to Cliff Smith, Fay Gronski, and Susan Yoder.

V PUBLIC HEARINGS

A 96-07-178.04S (ANGELO PETER LETSOS)

Mr. Roosa passed out a draft of a resolution to be voted on after the hearing, which is designed for approval or disapproval. He also reminded the Council that they must disclose any ex parte conversations before they make a decision.

Mr. Roosa swore in Nettie Gustafson, planner for Lee County. Ms. Gustafson reported that the property in question is called Faces Sports Bar and Grill, which is asking for a variance to serve alcoholic beverages at the outdoor seating area. There is a residential area located 100' from the area, but that house is owned by the applicant. Under current zoning regulations, 66 parking spaces would be required, but it has 16 parking spaces and has been a non-conforming use and is grandfathered. The surrounding area contains single family and duplex zoning and commercial zoning. In the past, this same area of Town has been approved for consumption on premises with outdoor seating. The principal use of the property is as a restaurant with an inside seating of 92. The policy of their department is to protect the residential area, but this restaurant is in an area of commercial establishments already, and residents should not be adversely affected, especially since no outdoor music is allowed. The conditions the County staff recommends for approval are:

1. Outdoor seating area limited to the area on the site report
2. The outdoor area can only be used in conjunction with the restaurant (at least 51% food service)
3. Live outdoor entertainment and music is prohibited
4. The hours are limited to 8 AM to midnight
5. Outdoor lighting is to be shielded from the neighboring areas
6. No advertisement that alcohol is served is to be visible from Estero or Ohio Street
7. The owner needs to apply for a limited review since he has placed impervious pavers on the site

It was noted that the LPA in their Resolution 96-2 recommends that the applicant's request be approved with the following changes to the county conditions:

1. add the words "not to exceed 60 seats"

3. add the words “and/or any type of outdoor speakers”
4. change the permitted hours to 11 AM to 10 PM.

Mr. Reynolds recommended a condition that total seating be limited to 159 seats inside and outside so that the total density is not increased since parking is so limited. (The 4-COP-SRX license requires at least 150 seats and there is no way to require more parking because it is grandfathered unless the applicant tries to expand his seating.)

Mr. Roosa swore in Mr. Letsos. Mr. Letsos stated that he has increased his parking voluntarily to 26, but he has not added any seating. He formerly had 160 seats inside. He has had his license for 14 years and he has no problems with the County staff and LPA conditions.

Mr. Roosa swore in Johanna Campbell. She stated that at the LPA meeting there were quite a few residents who came to speak.

The public hearing was closed.

The Council agreed to accept the LPA recommendations with the following additions:
Condition 1: Add at the end of this condition that total seating is limited to 159 seats; and Condition 6: Change the wording to no “outside” advertisement on Estero or Ohio.

Motion: Mr. Reynolds moved that outside seating be limited to 40-45. There was no second. The motion died.

Mr. Roosa asked the Council the following questions in order to complete the resolution:

Paragraph 1: Did the applicant prove that the request will not adversely affect the surrounding area? Mayor Cereceda, Mr. Murphy and Mr. Isler voted that he showed proof. Mr. Reynolds voted no.

Paragraph 2: Is there an error or ambiguity in the Land Development Code which must be corrected by this permit? All Council members agreed there is no error.

Paragraph 3: Will the character and nature of the surrounding area make approval of the permit appropriate? All Council members agreed that it would be appropriate.

Paragraph 4: Will the permit be consistent with the objectives and density of the Lee Plan? Mayor Cereceda, Mr. Murphy and Mr. Isler agreed that it would be consistent. Mr. Reynolds disagreed.

Paragraph 5: Does the permit meet all standards for the proposed use? All Council members agreed that it meets all standards.

Paragraph 6: Are there environmentally critical areas which will be adversely affected? The Council agreed that there are not.

Paragraph 7: Will the permit be compatible with existing uses and will the permit cause a nuisance to others? The Council agreed that it is compatible and will not cause a nuisance.

Paragraph 8: Does the location place an undue burden on transportation and will it be served by streets with capacity to carry the traffic? Mayor Cereceda, Mr. Murphy and Mr. Isler agreed that it does not place an undue burden on traffic. Mr. Reynolds disagreed.

Paragraph 9: Will the permit be in compliance with land use regulations? The Council agreed that it will be in compliance.

Motion: Mr. Murphy moved and Mayor Cereceda seconded that the resolution be approved with the conditions of the LPA and the added conditions of the Council. After the amended motion failed and after further discussion, Mayor Cereceda, Mr. Murphy, and Mr. Isler voted for the motion. Mr. Reynolds voted against the motion. The motion passed.

Amended motion: Mr. Reynolds moved that there be an extra condition that no seats be allowed on the Estero Boulevard side. There was no second. The amended motion died.

Discussion: Mr. Roosa swore in John Mulholland. In answer to a question from Mr. Isler, he recalled to the best of his ability that in the LPA hearing one of the neighbors was against the outdoor seating because of the fear of backing out on Ohio, but it was answered to the satisfaction of the neighbor. One of the LPA members had a question about the safety of seating on Estero but it was answered because of the retaining wall which has been built.

Mr. Roosa swore in Pam Houck, senior planner for Lee County. She reported that the request is for a variance from the required 15' setback to an 8'6" setback at a house on Estero and Sterling. The applicant wants to place a 6' x 24' deck on the north side of the house. A previous owner installed French doors which open to a 9' drop, so the applicant needs the deck in order to eliminate a safety hazard. In investigating this variance, the staff discovered a minor encroachment on one side of the house of .3' and this variance will fix that problem also. The County staff recommends allowing this variance with the condition that it is limited to the deck on the site plan, and the LPA agreed.

Mr. Roosa swore in Kevin Tague, who represents Mr. Casey. He mentioned that this area is located on a beach access, but there is not supposed to be parking at that access although people do park there. Even after the deck is built, there will still be room for parking. He tried to answer the question about why someone would put in a door with a 9' drop, but the house was that way before Mr. Casey bought the house and he was unaware when he bought it that he would need a variance to complete the deck.

There was no public comment. The public hearing was closed.

Mr. Roosa asked the Council the following questions in order to complete the resolution:

Paragraph 5: Is the variance of such a general nature that the ordinance should be amended instead? The Council agreed it is not a general or recurrent condition.

Paragraph 4: Will the variance be injurious to the neighborhood? The Council agreed it will not be injurious.

Paragraph 3: Is this the minimum variance that will relieve the applicant? The Council agreed that it was.

Paragraph 2: Were the exceptional conditions caused by the applicant? The Council agreed that the special circumstances were not the result of actions of the applicant.

Paragraph 1: Are the circumstances exceptional or extraordinary? The Council agreed they were exceptional.

Motion: Mr. Murphy moved and Mr. Isler seconded that the applicant be granted the variance with the stipulated condition. The motion passed unanimously.

C 96-08-175.02S (GANIM/TARICK)

This hearing was continued to a later date.

The Council took a break at 4:30 PM and reconvened at 4:45 PM.

VI PUBLIC COMMENTS AND INQUIRIES

A DAN PARKER

Mr. Parker spoke about the Town pool. The citizens have already voted on the issue and said they do not want their taxes raised to build a pool. He commended the pool committee for trying to get funding. If they can get the pool without raising taxes, he thinks it would be an asset to the Town.

VII APPROVAL OF MINUTES FROM OCTOBER 7, 1996

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

VIII REVIEW OF EXPENDITURES

Motion: Mr. Murphy moved and Mr. Isler seconded that the expenditures be approved. After discussion, the motion passed unanimously.

Discussion: Marsha Segal-George clarified that the Spikowski bill was the last bill on the partial contract for the 1996 fiscal year. The contract to be considered later in the evening will be for October forward until the comp plan is completed. The charge for bringing in Victor Dover an extra time was outside the contract.

IX COUNCIL MEMBERS' ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy had no items to bring before the Council.

B GARR REYNOLDS

Mr. Reynolds handed out copies of the minutes of the recent Traffic Committee. The Town will have one trolley year round, and a second one from December 15 to April 15. During season there will also be a 25 cent trolley to Summerlin Square, but out of season it will be a dollar (which would take you all the way downtown, if you wanted, for the same price.) We also have LeeTran service for handicapped, but not on the trolley. If the Town wants to add another trolley on the island, it would cost \$51,500. Three total trolleys would give service every 20 minutes during season. Since we have just gotten \$102,000 that was not anticipated in the budget, he suggested using part of that money for an extra trolley. Mr. Fetzer recommends charging 25 cents per rider because it keeps people from jumping on and off. Mayor Cereceda asked Mr. Reynolds to find out what it would cost the Town if there was no charge and if there were four trolleys. Mr. Gucciardo recommended getting the new figures then approaching the Chamber and the TDC to see if they will help by joint venturing on extra trolleys.

C RUSTY ISLER

Mr. Isler mentioned that we have asked the County to put off maintenance on the pier until after season. He suggested that the Town get a certain date, so that the date when the pier will be closed can be published ahead of time and everyone will get plenty of warning.

D ANITA CERECEDA

Mayor Cereceda mentioned that she has sent a letter to Commissioner St. Cerny about the Council's concerns. The letter should be brought before the Commission on Wednesday to see when a joint meeting can be scheduled. She also mentioned that she and Marsha Segal-George will be meeting with Don Stilwell and Commissioner Albion tomorrow at 2 PM.

She also mentioned Christmas banners, costing \$350-400 each, which can be installed on light posts downtown. There are cheaper banners but these are salt tolerant and should last 6-8 seasons. (She would like to put them on the light standards across the ski bridge, but that is a state road.) She is also considering a 25' Christmas tree made out of lights (\$1800). Mr. Isler said he is afraid it wouldn't fit with the bare bones government to buy too many, but he thought they might not get too much grief over one large banner over the road. Mr. Reynolds recommended lighting some of the coconut trees, but only 4 are wired for lighting. Mayor Cereceda will follow up with more specifics.

X APPROVAL OF CONTRACT FOR SPIKOWSKI PLANNING ASSOCIATES

Marsha Segal-George stated that this has gone to the LPA and they have approved it. This contract covers all aspects of the comp plan except the transportation, because they could not find anyone who would do this element for \$20,000-\$25,000. It will probably cost about \$45,000 because the problems are so complicated. Mr. Roosa stated that he has looked at the contract and approved it. Marsha Segal-George stated that she thinks the entire comp plan will come in under \$300,000 over a two year period.

Motion: Mayor Cereceda moved and Mr. Isler seconded that the contract be approved. The motion passed unanimously.

XI INTERLOCAL ON THE SWIMMING POOL

The pool committee is forming a not-for-profit corporation, but the county will not enter into an agreement with them. It must be between two governments so Mr. Roosa recommended that the Council sign the interlocal. The county will retain title to the property and the Town will maintain it. Mr. Roosa said that the County can never charge the Town rent for the land. If the Town cannot operate the facility, it will revert back to the county. The pool will be open to everyone in Lee County and all visitors. Mr. Gucciardo stated that the pool committee is still in the process of getting the not-for-profit designation, but then they can hold many more fund-raisers. They are confident that in three years they will have plenty of resources to cover the maintenance.

Motion: Mr. Isler moved and Mayor Cereceda seconded that the interlocal be signed with the County. Mayor Cereceda, Mr. Isler, and Mr. Murphy voted for the motion. Mr. Reynolds was opposed. The motion passed.

XII TOWN MANAGER'S ITEMS AND REPORTS

Marsha Segal-George mentioned that she received a letter requesting sponsorship of \$2000 from the Town for the sand sculpting contest. The Council agreed to send a letter saying that they have not made a decision on the use of the community services budget yet.

John Gucciardo reported that he has finally received the contract from Humane Society. He sent a draft to them in July which was basically the same as the Lee County contract except for money and elimination of items that do not apply to the Town. The Society signed the draft form, but Mr. Roosa said it would be OK. The contract is for \$29,300 payable monthly. The Council approved signing of the contract.

On October 9 Mr. Gucciardo sent the Council a memo saying that the County has now agreed that the parking meters under the bridge and behind Wings are now the Town's. The Council has three choices: 1. Remove the meters and create free parking 2. Keep the meters, maintain them, and collect the revenue, although we would probably have to reimburse the county for the cost of the meter heads. 3. Sign an agreement with Parks & Recreation for an 80/20 split, allowing them to maintain them and collect the money for the Town. Mayor Cereceda liked the first option, but the Council was afraid that if they turn it into free parking now, they wouldn't be able to sell the spaces later to Times Square merchants. The Town will not get any parking ticket revenue, and probably will not get reimbursement for revenues since January. The Council agreed to pursue option three for now.

John Gucciardo handed out a map of the drainage problem at Lauder, Lanark and Indian Bayou. On the west side of Indian Bayou, lots 3-9, at the rear of the property there is a 6' drainage easement, but the flow has been stopped. (It is unclear whether property owners on the east side of Dundee also have a drainage easement on the back of their property.) The County suggested either opening up the existing drainage, or rerouting drainage down Lauder to Dundee to the canal. Mr. Gucciardo is afraid that the second option will perhaps solve an existing problem but create one for someone else. He suggested writing a letter to property owners on Dundee and Indian Bayou asking them to clear the drainage easement. The Council agreed that the staff should try this option to see if they can get voluntary cooperation first.

XIII TOWN ATTORNEY' REPORT

Mr. Roosa gave the Council copies of a resolution in support of Conservation 2020.

Motion: Mayor Cereceda moved and Mr. Murphy seconded that this resolution be accepted. After discussion, Mayor Cereceda, Mr. Murphy, and Mr. Isler voted in favor of the motion. Mr. Reynolds voted against. The motion passed.

Discussion: Mr. Reynolds stated that originally the plan was for .2 mil for 10 years, but it was changed to up to .5 mil for 7 years and he cannot support that. Mr. Roosa clarified that this is a non-binding referendum. If the Commissioners decide to levy the millage, at that time they can restrict the money for use only for purchasing sensitive lands.

Mr. Roosa passed out a resolution in opposition to the proposed Lee County Charter. The problem is with the amendment procedure which allows for county-wide referendum on changes, and municipalities like Fort Myers Beach, which are small, would not have much of a vote. The problem could have been fixed by changing the wording so that if something affects a municipality, it must pass by more than 50% in that municipality as well as the county, but the writers did not do that.

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

Mr. Roosa mentioned a lawsuit which the Town inherited when it incorporated (Casson), in which the County filed a motion to quash the petition. He has received a letter that a hearing was held and the judge has granted the motion. He interprets the letter to mean that the judge has dismissed the case, so there is one less lawsuit for the Town to worry about, although there may be further hearings.

Mr. Isler mentioned that the Town has been named two times for accidents which have happened on Estero Boulevard, and he asked about legal liability. Mr. Roosa explained that the injured party files a claim against the Town, we refer it to our insurance carrier, our insurance company denies coverage because it happened on a county-maintained road, and they refer the claim to the county. If an accident happens on one of our side roads, our insurance company will take care of the defense as part of our insurance premium.

XIV PUBLIC COMMENT AND INQUIRY

A REGGIE REYNOLDS

Mrs. Reynolds suggested that since this is the first year of the new Town, the Town should hire a photographer to take a picture of the first Council and staff to hang at Town Hall.

B BILL WHITAKER

Mr. Whitaker commented on the project on Times Square. The enthusiasm and comments from the tourists are overwhelmingly in favor of the project, and they all say not to let cars drive on the pavers. Even though there are problems with closing the road, he is beginning to see possibilities of solutions regarding garbage removal and deliveries. He sees a changing sentiment among the other merchants also, wanting to put tables and chairs in front of their businesses. Mayor Cereceda said that she is planning a meeting with the merchants to start addressing the concerns of closing the street to traffic. They will try to have representatives from BalGas and Kimmons there also. An unidentified member of the public suggested that the Town check with other cities who have closed their roads, because she mentioned two places where making a pedestrian mall did not work and the road was later reopened. Mayor Cereceda said that she sees the Times Square area as an extension of the beach rather than a closed road. She feels it is a unique situation.

C BUD BROWN

Mr. Brown, owner of the Parkside Café, said that there should be no traffic allowed on the pavers because it will ruin them and he feels that most of the merchants will agree.

XV ADJOURNMENT

The meeting was adjourned at 6:52 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary