

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
DECEMBER 2, 1996**  
Nations Bank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I CALL TO ORDER**

The meeting was opened on Monday, December 2, 1996, at 3:05 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 PLEDGE OF ALLEGIANCE**

All assembled recited the Pledge of Allegiance.

**III INVOCATION BY THE REVEREND JEANNE DAVIS, PASTOR OF BEACH UNITED METHODIST CHURCH**

Rev. Davis led the Council and audience in prayer.

**IV PUBLIC HEARING - DELUCAS 96-10-023.05V**

Nettie Gustafson, of Lee County Planning and Zoning, stated that this case is asking for a variance on parking so that Dr. Victor De Lucas will be able to lease a small retail business specializing in small products or commodities in his building. The building is located on the northeast corner of Fairview and Estero, has 4000 square feet, and was constructed in 1961. Since then it has had three uses: office, dental office, and retail. Dr. DeLucas acquired the building in 1983. The retail use is gone now, and the building has been occupied by a bank for 12 years, and by Dr. DeLucas' dental office. The bank has now relocated and he wants that portion of the building to go from office back to retail. The current Land Development Code requires additional parking: the dental office needs 9 spaces, and retail needs 11. (The office portion has 2200 square feet, and the dental office has 1800. The surrounding area is C1A, RM2, and C1 and includes single family homes, a fruit stand, a food store and a motel. The site has always had 10 parking spaces (non conforming because it was built before Lee County zoning), and that number has been adequate over the years, and the applicant cannot provide more spaces. The traffic impact from office back to retail will reduce the number of trips (25 per hour peak.) The applicant is only changing the use of building, not changing the building itself, and the County staff recommends approval.

Ms. Gustafson answered a question about what types of uses are allowed as "small products," and she replied that it could be a store selling clothing, food, toys, etc. Dr. DeLucas has not specified the particular use, but he would be held to the allowed uses. It could not be a restaurant, barber or beauty shop.

Mr. Roosa swore in Victor DeLucas. He stated that he has had two inquiries, one for a clothing store and one for an urgent care center, which would have even less impact on traffic than retail. Ms. Gustafson said that the medical clinic would not fall into the small product category, although it requires the same parking, and if Dr. DeLucas decides to request use as a medical office, he will have to reapply for another variance.

The meeting was opened for public hearing.

**A JOHANNA CAMPBELL**

Mr. Roosa swore in Ms. Campbell. She stated that as a member of the LPA, she thinks she would have had problems with a medical center in that site. She also thought that there had been a traffic fatality recently in that area.

**B FRANCES HODOSH**

Mr. Roosa swore in Ms. Hodosh. She stated that if it is used as a medical clinic, you

would need room for an ambulance to pull in, because if it were not provided, the ambulance would stop traffic if parking spaces are not available at the time. Dr. De Lucas stated that it is a doctor's office, not a hospital, and it would generate less traffic because it is operated by appointment.

**Motion:** Mr. FitzSimons moved and Ray Murphy seconded that the request for a variance on parking for retail small commodity use be approve. The motion passed unanimously.

## **V PUBLIC COMMENTS AND INQUIRIES**

### **A DAN PARKER**

Mr. Parker stated that he would like to see Times Square closed to traffic as it is now. However the Town needs to follow the traffic plan written by Harlem-Bartholomew in 1989 which says that there should be no left turn from Estero onto 5<sup>th</sup> Street. He has even seen people try to turn left from 5<sup>th</sup> Street onto the bridge. In addition there needs to be a raised median which will give some safety to pedestrians. The Bartholomew study says that we won't need a traffic light.

### **B JOHN LALLO**

Mr. Lallo, owner of Pete's Time Out, stated that the Times Square construction has cost him \$23,000 or \$150 per day. Customers are confused about how to get to his business, and at night they are disappointed in the lack of action in front of it. He was against closing the road to traffic, but since it appears to be a done deal, the Town needs to do some things to help the businesses recover. They must be allowed to serve at tables on the square including alcohol. Last Saturday he served alcohol and it tripled his use outside. They also must be allowed to have entertainment. The sooner the better.

### **C ROGER DOMBROVSKI**

Mr. Dombrovski owns a home here and he likes the trolleys, but they need to get them off of Estero when they pick up or drop off passengers. There was not much traffic recently, but the trolley caused a traffic jam anyway. The Town does not need them if they cannot pull off the road.

### **D DON LETTER**

Mr. Letter lives here year round on the north end. The traffic at Times Square is extremely confusing to visitors now who can't find how to get off the island. It is hard to get into the traffic to cross the bridge because you can't see the oncoming traffic. He thinks the light should be moved to 5<sup>th</sup> Street.

### **E RUTH DUMBAUGH**

Ms. Dumbaugh spoke about the pool. She said that all the candidates except one were against the pool "unless it was the will of the people." The straw vote was against the pool, there has not been another vote, yet the pool is being built. Doesn't the will of the people mean anything? You don't need a pool when you are in paradise, and you don't need the extra expense.

### **F BRIAN SCANLAN**

Mr. Scanlan, owner of Mango Bay, stated that the left hand turn from Estero is very important because of all the businesses and the two parks. The traffic pattern is too confusing now. There is no bottleneck of traffic, so it is not necessary to go to Crescent Street and under the bridge. He also talked about whether kiosks should be allowed if the road is closed. He doesn't think it would be a good idea at first, and they can be added later if it is wanted. It will be a Town road, and kiosks will have to be bid out and it will be a big headache.

### **G MARY ELLA HOKE**

Ms. Hoke, who is a permanent resident, noted that there is no sidewalk from the Beached Whale down to Crescent Street. She knows that the sidewalk of pavers is going down the beach side, and she wanted to know if there is a plan for a regular sidewalk on the bay side. Mr. FitzSimons stated that it was originally supposed to be in the CRA project but had to be cut because of finances.

### **H DOROTHY NORRIS-SHUCHARDT**

Ms. Shuchardt stated that she took a walk of eight blocks, and asked everyone she met why they came to Fort Myers Beach. Out of 200 people of all ages, not one mentioned that they wanted to ride a wave runner. While she was talking to people, a motor scooter went by scattering people. She wondered if the Council has made any rule about motorized vehicles being allowed to ride on the beach. She has a friend who wants to ride horses on the beach. What is allowed on the beach besides people?

### **I BOB GAYDOS**

Mr. Gaydos spoke about trolleys on Estero. He feels that two or three should be

sufficient. For the Town to pay \$50,000 to \$100,000 to give people a ride every 15 minutes instead of every 30, seems ludicrous and is not bare bones. If the Council does approve adding trolleys, then make the operation cost efficient, rather than a giveaway. Be cautious how they spend the taxpayer's money. The trolley drivers don't pull off the road, which causes traffic to back up. If the Town gets more trolleys, the problem will be even worse.

**J KATE ENGLISH**

Ms. English, an attorney on behalf of Brad and Cindy Benson, stated that the Bensons own businesses on the beach (rental apartments, a restaurant and some land for parking.) They are concerned because ever since Times Square closed for construction they have not had access to parking, they have two apartments which they can't rent because of no parking, and they do not have access to trash pickup. Now must carry trash down to the parking area on the north side of square. They request two parking spots for their apartments, and a solution to their parking and trash problem.

**K GENE FICHTER**

Mr. Fichter is concerned because recently when he was out in his boat, jet skiers were jumping his wake. He called them over and told them, but they spoke in a different language and didn't understand. He also want the Town to not allow traffic in Times Square.

**L RUSSELL SCHROPP**

Mr. Schropp, with Henderson Franklin law firm, represents Murray Carlslake, particularly with respect to his property on Avenue C, where he has operated a personal watercraft business. He has been trying to get a license from the county but has been rejected. He has established the use, and the county has been wrongfully denying him for the past several years. The proposed Town ordinance appears to grandfather nonconforming uses that are already established (27-55).

**M CAROLYN HARRIS**

Ms. Harris, who lives on Pescadora, is concerned about personal watercraft. She will never ride one because she feels they are too dangerous, and she wanted to know if they are required to have insurance, because someone is going to be sued. She also wanted to know if this ordinance will be enforced? Could there be a name on the side of each waverunner so you could identify them. She wonders if they couldn't be run out of marinas on the back bay rather than the beach. The beach is not serene and quiet for walkers. There is not much sand, and if a waverunner is parked there, you have to walk around it. She had waverunners in her canal and they were not following the no wake rule. She wondered if we need to put up signs in the canals.

**VI APPROVAL OF MINUTES: NOVEMBER 14, 1996**

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

**VII REVIEW OF EXPENDITURES**

**Motion:** Mr. FitzSimons moved and Mr. Murphy seconded that the expenditure report be accepted. The motion passed unanimously.

**VIII LPA UPDATE**

Johanna Campbell reported that the LPA in the last month has been talking about mother-in-law apartments ("accessory apartments") and are developing some options to consider. In the meantime, code enforcement will continue as now, but violators will not go before the hearing examiner until April when they have a plan. The LPA is planning to have a public forum at the end of January. LPA members are also studying signs and building heights. They finished with the jet ski and parasailing ordinances and passed them to the Council. They have also studied the hotel/motel density, and the impact of federal floodproofing rules.

**IX COUNCIL MEMBERS' ITEMS AND REPORTS**

**A RUSTY ISLER**

Mr. Isler had no items to bring to the Council.

**B TED FITZSIMONS**

Mr. FitzSimons had no items to bring to the Council.

**C GARR REYNOLDS**

Mr. Reynolds had no items to bring to the Council.

**D RAY MURPHY**

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

**E ANITA CERECEDA**

Mayor Cereceda reminded the gathering that the 4000 new plants that have been planted in Matanzas Preserve are in dire need of watering. If anyone is interested in helping with this effort, please contact Tom Myers or Barbara Keene.

**X PUBLIC HEARING ON PERSONAL WATERCRAFT ORDINANCE**

Mayor Cereceda read the titles and opened the public hearing.

**A LINDA KANE**

Ms. Kane mentioned that on page 7, section 27-50C, it states that vehicles must be registered in the name of the business. She thinks that is keeping business owners from using leased equipment. She would like the freedom to lease or buy. On page 9D1, regarding the transfer of PWVL licenses to new conforming locations, she asked if she can transfer them even though she is in a non-conforming location. Mr. Roosa answered that she could not. She said it should not be at the expense of the operators if she wants to sell or transfer.

**B CHRIS SCHAAB**

Mr. Schaab spoke about section 27-49C, and asked if that meant nobody else could sell his services. He has several people now who sell his services on commission (for instance from a bicycle rental shop.) That would be a great hardship on him. He also mentioned that he has a problem with the limitation to eight skis, and if he cannot get a variance, he would have to sell some of them.

**C BILL PERRY**

Mr. Perry of Aqua Sports at Holiday Inn, spoke regarding the transferability of licenses. He understood they could sell them even if it was nonconforming. Mr. Roosa answered that they can't move to a new conforming location unless the licenses fell below 15. He can sell but cannot transfer to a conforming location. Mr. Perry also spoke about leasing vessels. He thinks the owner puts a lien on it, and then it is registered in your name. He agrees that other vendors should be allowed to get a variance to allow more than eight skis if they are taken away from congested area. He also encouraged the Town to take up the offer of loan vehicles from the manufacturers.

**D HARRY GOTTLIEB**

Mr. Gottlieb said the last place to put waverunners is on Estero Bay because of fishing and nature. It is an environmentally sensitive area.

**E CAROLYN HARRIS**

Ms. Harris questioned if the Council will relinquish their rights by allowing entrepreneurs to sell their licenses.

**F JOHN MULHOLLAND**

Mr. Mulholland thinks the ordinance without enforcement is useless. He encouraged the Town to avail themselves of the loan of vessels.

**G MURRAY CARSLAKE**

Mr. Carslake owns real estate on the beach and has several places with watercraft. He is having a problem getting his license renewed. The Town or county cannot take away something a property owner has without reimbursing them.

**H LONNIE CLARK**

Mr. Clark, of North American Watersports, is concerned about leasing, and stated that it is important to be able to lease equipment. It would serve no public purpose or interest and is not done for other businesses. The original purpose and intent of the ordinance was for public safety and to preserve natural resources. Is it a mistake that preservation was left out?

**I KATHLEEN FISHER**

Ms. Fisher of CRS Beach Service, pointed to Section 27-49C and asked what it has to do with safety where money is transacted. It would jeopardize their business if other people could not sell their services for them. Also on page 7 (3), she asked if this meant that if they have one vessel in the water, they must also have a manned vessel in the water at the same time? That would add to congestion on the beach. On page 11 (I), if one employee is required for 5 vessels in the water, that would mean she would need another employee for the next 3, since they are limited to 8 skis. She suggested raising the limit to 10. Also

she reminded the Council that she wants a variance for her Dolphin Adventure Tours.

**J LINDA KANE**

Ms. Kane said that on page 11(f), it requires each vessel to be registered in the name of the business. Also on page 7, 9, and 13 it talks about transferability, and says a license holder may continue to operate as a nonconforming use. She wants to know if they can transfer or sell these licenses.

The public hearing was closed.

Marsha Segal-George pointed out the issue of 500' vs 1000' and said they all need to be consistent. One suggestion was to make the slow speed zone 500' on the gulf, and 1000' on the back bay. In addition, on page 2, the definition for floating vendor may need to be removed. On page 3, the definition for parasail may need to be removed because on page 6 (D), is the only time there is a reference to floating vendors and it is left over from the County ordinance.

**Motion:** Mr. FitzSimons moved and Mr. Reynolds seconded that the second part of page 6, 27-49(d) be removed, and also remove from page 2 the definition of floating vendor, and on page 3 to remove the definition and term of parasailing and parasailing activity. The motion passed unanimously.

Regarding page 6 C, Marsha Segal-George said that it came from the county ordinance, and she thought it was just to keep business on your own property. She said some people are going up and down the beach soliciting and that is what this was trying to avoid. In her mind this wouldn't prohibit an off-site selling place. Mr. Reynolds said he has no problem if it is a referral situation, but then the problem becomes how many "branch offices" would be allowed.

On the issue of transferability, Marsha Segal-George said that the Town has inherited a number of licenses from the county, both conforming and nonconforming. There are congestion problems and too many operators (24) in the space. They are trying to deal with congestion without putting anyone out of business, so they came up with limiting the locations to 8 skis, and to allow attrition to get the number of licenses down to 15. If someone has a nonconforming license and they don't do what they have to do to keep it current, it will go away. That is the jeopardy of the nonconforming license. As long as they are in good standing, they can sell their license as long as it stays at the same location. If some new deal comes along that everyone wants, the nonconforming locations probably won't be allowed to have anything more than what they have now. Conforming locations might be allowed more. Some people want to get rid of nonconforming licenses, but you can't get rid of them because of the liability. The only answer is to take a hard line on future licenses, and the ordinance will only work through enforcement.

Regarding the issue of leasing, it has not been a big issue before, but would be serious for one operator. If you are going to enforce the ordinance, the Town needs to have as many ways as possible to keep a close tab on the vehicles.

**Motion:** Mayor Cereceda moved and Mr. Reynolds seconded that the slow speed zone be placed at 500 feet in the gulf and 1000 feet in the bay.

**Discussion:** It was mentioned that the Council would have to go back and amend the previous ordinance in order to make them consistent. Mr. Isler said that in order for it to be consistent, it has to apply to every boat, not just jet skis. He felt it should stay at 500', because he doesn't think 500' has caused any injuries or hazards. The bay is almost all idle speed already. Mr. FitzSimons asked if the motion only had to do with this ordinance which only applies to rental jet skis. He would like to add "except in the marked channels" because those speed limits are set by the county. Mayor Cereceda and Mr. Reynolds agreed with the amendment. Mr. Roosa suggested staying at 500' on this ordinance and then amending them both at the same time so there won't be any inconsistency. Mayor Cereceda withdrew her motion. The process to amend will be initiated.

Mr. Murphy asked how arduous it will be to request a variance for additional skis. Marsha Segal-George said that it will only affect two operators as far as she knows. They will have to go through the LPA first.

**Motion:** FitzSimons moved and Mr. Reynolds seconded that the ordinance be adopted with the

previous changes. The motion passed unanimously.

The Council took a break at 5:28 PM and reconvened at 5:40 PM.

#### **XI RESOLUTION ON RESTRICTING TIMES SQUARE TRAFFIC AND THE SETTING OF A PUBLIC HEARING**

Mr. Reynolds said the the resolution should say “no vehicular traffic except service vehicles between 2 AM to noon” and that they need to define service vehicles. Mr. Roosa said that it is intended to mean solid waste, gas companies, parcel delivery, and trash. Mr. Gucciardo said that the details are not all worked out with merchants and county yet, but it is still ongoing. He feels that it is the County’s project and it is necessary that they help work out these details. This resolution is an attempt to set a hearing date so those things can be defined. Marsha Segal-George pointed out that this will not have any effect until the area is turned over to the Town. The county has allowed tables in the area, not the Town. The staff would like the whole project completed before taking control, not just the Times Square area. Mr. Reynolds asked if there is some way to keep all vehicles, including service vehicles off the area, because they would cause the most damage. Mayor Cereceda said that weight will not disturb the project, but it is grease, grinding, spillage and sheer numbers that causes damage. Some problems are not solvable, such as getting gas to the new Pierside Grill because it is too far for their gas line. The business people expect the Town to help them with their existing problems. It was mentioned that the map is incorrect and needs to be changed. The Town also needs to deal with parking on the paver blocks outside of the closed area.

**Motion:** Mr. Reynolds moved and Mr. FitzSimons seconded that the resolution be adopted with changes in the map. The motion passed unanimously. The public hearing is set for December 16, 1996 at 7:00 PM.

#### **XII REVISED INTERLOCAL ON THE POOL**

Mr. Roosa said that the commissioners have requested this change because they were concerned that the admission price be the same for everyone in the county. The only change is 1.3. Mr. Reynolds would like to add a statement at the end after “the county’s best interest”: “However, after ten (10) years of successful maintenance and operation of the pool and the land site, the County shall sell the pool and the site to the Town of Fort Myers Beach for the sum of one dollar (\$1.00). The pool and site shall forever become the sole property and ownership of the Town of Fort Myers Beach.” Mr. Roosa is not sure this is the proper time to approach this with the county based on the current climate with the county. He provided the Council with an alternate page 3 which adds that language. Mayor Cereceda was afraid that it would delay the project by several months.

**Motion:** Mr. Isler moved and Mayor Cereceda seconded that the interlocal be signed in its original form. The motion passed unanimously.

#### **XII DISCUSSION ON TROLLEYS**

Marsha Segal-George put together a memo in order to try to put closure on this before the season begins. She feels that option two seems better. She would like to go to TDC and ask if they put advertising on the trolleys, would it qualify for funding? The town can also do a survey to see who is using the trolleys. She can’t buy the funding formula that the County has offered and would like to offer them less. She would like to put in a standing offer to buy trolleys from the county whenever they are available. (The Chamber is not in a position to help financially now.)

**Motion:** Mr. FitzSimons moved and Mr. Reynolds seconded that the staff be authorized to spend up to \$72,000 to extend the trolley operation, and to use all due diligence to try to get it for less.

**Discussion:** This would provide 3 5/8 trolleys. Mr. Isler asked if this is right to spend transportation money on something that peaks during tourist season and is probably mostly tourists using the additional trolleys. Mr. FitzSimons said the purpose of the motion was to give the staff some leeway to get this done fast. Mayor Cereceda said that trolleys take cars off the road, and traffic is our main problem. It’s our problem even if no one gives us any help. We must be pragmatic. Mr. Isler is afraid the County won’t give in if we already have passed that we will spend that much money. Not

only are we not getting the gas tax money, but we aren't getting money from tolls which would cut down on traffic.

**Amended Motion:** Mr. FitzSimons amended and Mr. Reynolds agreed to the amendment to withdraw the dollar figure from the motion. The Town Manager is authorized to follow Option Two. The motion passed unanimously.

#### **XIV DISCUSSION ON PRIVATE ROADS**

Mr. Reynolds stated that there are a number of roads on the island which were never accepted by the County. What should the Town do about maintenance on them, particularly on Palmetto now, but on the others eventually? Palmetto is not being taken care of by the people who live it. Does the Town want to take them over? There are three options: 1. Buy the right of way; 2. Persuade the owners to deed the right of way to the Town; or 3. Do nothing. Mr. Gucciardo said there are approximately 4 on the island. Mr. FitzSimons said we should only accept streets that are up to standard. They must be brought up to standard first, and perhaps the Town can help provide mechanisms for the neighborhood to tax themselves to bring it up to standard. From that point on the Town could maintain it. He said theoretically the owners paid less for their property because it was on an unimproved road. Mr. Reynolds said the taxes have evened out now and they are basically paying the same taxes as if their roads were improved. Mr. Murphy, Mr. FitzSimons, Mayor Cereceda and Mr. Isler felt that the Town shouldn't do anything if the owners don't want to spend money on their own road. Mr. Gucciardo clarified that we have already spent money for drainage in the area, but those were all on Town roads.

#### **XV DRAFT DISCUSSION OF PUBLIC SERVICE TAX ORDINANCE**

Mr. Roosa said that this ordinance imposes a zero percent tax, which will have no affect except to cover the Town so the County Charter cannot impose these taxes on the Town. Mr. FitzSimons recommended striking the zeroes and inserting "a tax up to the amount allowable by Florida statutes." The actual tax would be defined in a subsequent amendment. It was decided to keep the rate at zero percent. He also recommended removing the sliding scales. On page 4, line 122 should be zero. First reading was set for December 16.

#### **XVI REPORT ON PURCHASE OF NEW COMPUTER**

Mr. Isler passed out some information on the purchase of a fourth computer. He recommends getting a full-size monitor for Marsha Segal-George for her desk rather than using the laptop. He also recommended getting a phone for about \$900, which could be used for 911 (like a panic button). It would also allow making the new machine the server for all the machines for dedicated access to the Internet so the staff would get immediate notification of e-mail. It would cost about \$133/mo. Marsha Segal-George said this might save time for the staff and make them more efficient since she can take documents out of Word and send them by e-mail. Mr. FitzSimons said that we already have e-mail, and \$133 per month would just make it quicker. Mr. Reynolds thinks we need it, but questioned whether we need it yet.

**Motion:** Mayor Cereceda moved and Mr. Reynolds seconded that this expense be approved. The motion passed unanimously.

#### **XVII TOWN MANAGER'S ITEMS AND REPORTS**

##### **A. RESOLUTION IN SUPPORT OF CARL ACQUISITION OF PINELAND SITE**

Marsha Segal-George said this is important because of the University of Florida and the archeological work they want to do and also what we want we want to do on the Long property.

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

**Motion:** Mr. Isler moved and Mr. FitzSimons seconded that we pass a similar resolution on the Estero property. The motion passed unanimously.

##### **B WORKSHOP**

The Council agreed to cancel workshop that was scheduled for December 12.

**C TRANSPORTATION DRAINAGE ISSUES**

Mr. Gucciardo asked the Council to read the memo and give their input.

**XVIII TOWN ATTORNEY'S ITEMS**

Mr. Roosa mentioned a letter from George Crawford defining the County road as "Estero Boulevard from the point at which San Carlos Boulevard (a State road) ends and Estero Boulevard continues south to Bonita Beach." Mr. Crawford has decided that Estero Boulevard is the only arterial road in the Town. Mr. Roosa thought that Estero north to the two county parks could also be arterial, but a map from the MPO shows that the arterial does not go north to the park.

**XIX PUBLIC COMMENT AND INQUIRY**

There was no public comment.

**XX ADJOURNMENT**

The meeting was adjourned at 7:25 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary