

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
NOVEMBER 18, 1996**  
Nations Bank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I CALL TO ORDER**

The meeting was opened on Monday, November 18, 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 PLEDGE OF ALLEGIANCE**

All assembled recited the Pledge of Allegiance to the flag.

**III INVOCATION**

The invocation was given by Jim Overhulser of the Vineyard Christian Fellowship of Fort Myers Beach.

**IV PUBLIC COMMENTS AND INQUIRIES**

**A CEIL SPUHLER**

Mrs. Spuhler, who lives on Estero Boulevard, asked the Council to extend the slow speed zone from 500' to 1000'. She felt that this was important for three reasons: for the safety of swimmers who go out further during low tide, to soften the noise, and to make private owners aware of the fines. She felt that both rental craft and private craft should be under the same restrictions.

**B SCOTT PORTER**

Mr. Porter has a business, Flotilla Foods and Sundries, which is licensed by the County as a floating vendor, and licensed by the state as a restaurant. His licenses are in good standing, and he is based at a local marina, but the vessel safety ordinance, as proposed, would disallow his business. He asked the Council to grandfather his license.

**C J. D. WILLIAMS**

Mr. Williams, owner of Sundance Water Sports, spoke about the personal watercraft ordinance. The items that worry him the most are on page 7(27-50) and page 13(27-55B), which concern non-conforming licenses, which will allow about 35-40 waverunner stands on the island.

**D TED PRIMICH**

Mr. Primich, from the Lani Kai, recommended tying the number of waverunners allowed for each license to the number motel rooms, parking spaces, or beachfront footage. This proposed ordinance will cut his volume in half. With only eight waverunners he cannot pay his monthly rent and he will be out of business. Maybe a distinction between conforming and non-conforming licenses would help.

**E SHARON FAIRCLOTH**

Mrs. Faircloth, of Holiday Waverunners, is worried that increasing the idle speed zone to 1000' as suggested by LPA, although good for swimmers, would put the waverunners out so far that she cannot see them from shore. Their business only runs 6-8 watercraft, but she thinks it is fair to allow more if a place is big enough to handle it.

**F LONNIE CLARK**

Mr. Clark said the original purpose of Lee County 95-13 was to promote safety and to preserve and protect natural resources. Little Estero Island is a critical wildlife area and he thinks it should have the same setback requirements.

**G JAMES TUCK**

Mr. Tuck lives on Estero Boulevard, and wants to move the limit out to 1000 feet which will go a long way toward eliminating noise.

**H CHRIS WEBBER**

Mr. Webber, of Mid Island Water Sports, is OK with 1000 feet because of noise, but it does take his customers very far out. He recommended moving the buoys out to 700 or 750 feet. He also wanted to talk about the requirement for CPR. His insurance agent said it would be unenforceable, and if there was an accident while someone was on duty without CPR, the Town could be liable because they did not enforce the law. Also, the wording should be changed to one half hour before or after sunset and sunrise in order to agree with Coast Guard rules. He feels that the Town should allow more than 8 watercraft for the larger operations.

**G BILL PERRY**

Mr. Perry, of Aqua Sports, supports increasing the slow speed zone to 1000' and he will put his buoys out that far anyway because it makes his neighbors happy. He thinks that 1000 feet would help protect nesting areas and manatees in the back bay. The variance clause needs to be looked into and perhaps based on parking spaces or number of motel units.

**V APPROVAL OF MINUTES FROM NOVEMBER 4, 1996**

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

**VI APPROVAL OF EXPENDITURES**

Mr. FitzSimons asked about the bill for Spikowski and Associates. Marsha Segal-George said that the majority of the bill is for the LPA and a small amount is for helping the Town in working with the county and with unusual requests.

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

**VII COUNCIL MEMBERS' ITEMS AND REPORTS**

**A RAY MURPHY**

Mr. Murphy noted that another person died on Estero Boulevard this week, and he suggested that the Town contact the county to light them up or get blinking lights. Marsha Segal-George asked if there had ever been any talk of raising the walkways (like speed bumps). Mr. Gucciardo asked if the Council would like this to be handled directly with the county or through the traffic committee. Mayor Cereceda suggested that he contact DOT before the next traffic meeting so they will be prepared to talk about the options at the meeting. Mr. FitzSimons wondered about battery operated blinkers or a button for the pedestrian to push. Mayor Cereceda said perhaps the sheriff could be contacted to give out tickets. Mr. Reynolds would like to see a sign at each crosswalk telling cars to stop when pedestrians are in the crosswalk. We also need publicity to get word out to remind people to stop for pedestrians.

**B GARR REYNOLDS**

He spoke about the personal watercraft ordinance, particularly that access to the gulf be required for a license, so that they are not using public access. He also agreed that a large hotel should be allowed more waverunners because it is an extension of their business.

He had planned to talk about Palmetto Street, but decided to wait until the next meeting so that the other Council members could study his proposal.

He reported that he polled the traffic committee and they unanimously recommend a 25 cent fare on the trolleys rather than having them be free. They also agreed that it was necessary to have 3 or 4 trolleys. Mr. Whitaker suggested having the fourth trolley only operate during peak hours, perhaps from 10 AM to 6. The committee also recommended closing Times Square to traffic and that commercial traffic be restricted. He also recommended adding a right turn lane on San Carlos.

**C RUSTY ISLER**

When Marsha Segal-George started working, the Town was in danger of losing the CRA project and the pool, but because of her expertise, both projects have been protected and are going forward. He presented her with a poster in thanks for her work.

**D TED FITZSIMONS**

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

**E ANITA CERECEDA**

Mayor Cereceda has been meeting with Times Square merchants, but there are still a lot of unresolved problems. She thinks it is now time for the Council to decide whether to close the road or not, so that the merchants can decide whether to sue or to move on and be happy. She would like to schedule the first public hearing for December 2, at 3:00 PM. There are still some legalities to be investigated, but Mr. Roosa thought they would be resolved by then.

She thinks it is time to buy another computer for volunteers or Council members to use, because there are only three terminals and they are always in use by the three staff members. Mr. Isler will look into it and bring cost estimates to the next meeting.

She publicly thanked the staff for their preparation for the meeting with the commission. She thought the meeting went well because they were so well-prepared.

She also thanked everyone for the opportunity to serve as mayor for the first year.

**VIII PRESENTATION BY MR. FETZER ON THE TROLLEY**

Mr. Fetzer said that core service is one trolley per hour, seven days a week, from Santini Plaza to Bowditch Point, and they also provide handicapped service. From December 15 to April, there will be two trolleys per hour. He prepared two options, one for one addition trolley, and the other for two additional. Option 1 would provide service every 20 minutes, and option 2 would be every 15 minutes. If the Town adds extra trolleys, they could extend the route to Carl Johnson if the Town would like. He said that service remains hourly year round in the rest of the county and is only increased on Fort Myers Beach during season. Several years ago they investigated the possibility of allowing trolleys to use the middle lane only if traffic is at a dead stop. Both the state and the county expressed concern because of taking away turn lanes, the problem of how trolleys would pass each other, and the safety of where people could deboard. Mayor Cereceda wondered about an express trolley where stops would be at crosswalks since traffic is supposed to stop at those anyway. Lee Tran's proposals are based on \$40 per hour (the national average is \$68), which he said is their standard operating cost. Since the Lee Tran has eight operational trolleys, and six of them are sitting idle, Mr. Gucciardo questioned why it costs \$40 for additional trolleys. He thought that additional trolleys should be billed for actual costs only. The Council asked if the Town can lease the idle trolleys, but Mr. Fetzer said that they cannot lease to a private party, and it would present a problem to lease to the Town because Lee Tran is the designated provider for the area. The Council questioned if the Town could buy the trolleys since they are devalued beyond their useful life, and Mr. Fetzer answered that they will have to auction them, probably next year, but that governmental entities have first chance at the bid. They have ordered new trolleys (which cost about \$580,000 new), and they need to receive them before they auction the old ones. In response to a question, he answered that back when the Town was provided four trolleys and they were free, there were 400,000 riders. Now there are 200,000 riders. The Council will need to let him know within a week if they want to add another trolley in December.

The Council took a break at 7:45 PM and reconvened at 7:52 PM.

**IX PUBLIC REHEARING ON DONALD A. & ANNE S. NYMAN REQUEST (95-07-032.02Z)**

Mr. Reynolds discussed a paper that he had distributed to the Council concerning the Nyman hearing. He requested that it be continued until a later date because the map shows a different zoning (RM2) and because the County staff did not do a review of the new request. He also mentioned that the request does not show the number of square feet of the five apartments.

**Motion:** Mr. Reynolds moved and Mr. FitzSimons seconded that the rehearing be continued until additional information is received. After discussion, Mr. Reynolds voted in favor of the motion. Mr. FitzSimons, Mr. Murphy, Mr. Isler and Mayor Cereceda voted against the motion. The motion failed.

**Discussion:** Mr. Isler suggested that they have the hearing, and then postpone it if they find they need more information after the information is given. Mr. Roosa said that the problem is that the map shows RM2 zoning, and the applicant made his application based on the map. It is the county's position that it is zoned

TFC2 (two family conservation.) Mr. Roosa explained that the Council first heard this case in February, the Council denied the request, and the Nymans applied for a special master hearing. They have redesigned their request to address the objections of the Council, and have now requested a rehearing. There is no procedure for it to be re-reviewed by the County. The Town asked for their input, but it was not necessary.

Mr. Roosa provided the Council with a resolution to be completed at the end of the hearing. In addition, he provided copies of the land plan, goals and objectives that the hearing officer decided were in compliance.

Matt Uhle reviewed the case which was first heard nine months ago. The parcel is at School Drive and Estero Boulevard, and includes six platted lots totaling 22,000 square feet. There are four structures containing five units which are 30-50 years old and not in great shape. The area is called "urban community" on future land use maps. The original proposal was for 6000 square feet of commercial building on two floors, with access points on School and Estero. The County staff did not approve the request because of their concern that it would violate the section of the comp plan which protects against commercial intrusion into a residential neighborhood. However the hearing examiner did not see it as a violation, and there was no neighborhood objection, just objection from the Civic Association. However In February the Council voted 4 to 1 to deny the request. The Nymans opted to take the request to a special master because they did not want to litigate, and they thought that with input from the Council, they could address the problem and make changes that would be agreeable. The Town Manager and the Town Attorney agreed.

The changes are: 1.) They removed the access point on School Drive; and 2.) They changed the use from 6000 feet commercial, to 3850 feet on the bottom retail, and 3850 feet or less in five apartment above. These two changes address the concerns of traffic and intrusion into a residential neighborhood and will reduce traffic by 25%. He noted that there are other buildings in the area that have residential above. They have also included extraordinary buffering (8' fence and tall trees) that was recommended by the hearing examiner. There will be no hotel/motel use and there is more parking. Certain restaurants might be allowed.

Mr. Roosa swore in Mike Roeder, a planner with Humphrey and Knott. They have left open the option of floodproofing the bottom and then the building won't have to be elevated. There will only be one floor of commercial and it will be on the first level in any case.

Mayor Cereceda opened the meeting to public comment.

**A HAROLD HUBER**

Mr. Roosa swore in Mr. Huber. He questioned if these are going to be rental units, and if so, does the Council plan to establish a minimum rental period for the units (daily, weekly, monthly.)

The public hearing was closed.

Mr. Roosa stated that the County has identified Estero as a constrained road, which takes away the impact of traffic, so the Council cannot use traffic as a limiting factor.

Mr. Isler said that the neighborhood, in this particular spot, is residential, except for the school, library and park, which support the neighborhood. He thinks that the request will damage the residential nature of the area, and that it will have a negative impact on the school.

Mr. FitzSimons noted that the plan doesn't add residential units, but it adds commercial traffic on a highly traveled area of the road. Also the pool is being added to the area soon.

Mr. Roosa asked the Council to vote on the individual parts of SSection D, paragraph 2:

A) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request will have an adverse impact on the intent of the Land Development Code. Mr. Murphy voted that it will not.

B) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request is not consistent with the goals of Lee Plan policies 5.1.5, 6.1.5, and 18.2.1. Mr. Murphy voted that it is.

C) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request does not meet performance and locational standards. Mr. Murphy voted that it did.

D) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request is not compatible with existing or planned uses. Mr. Murphy voted that it is.

E) Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request places an undue burden on existing facilities. Mayor Cereceda and Mr. Murphy voted that it does not.

F) Mayor Cereceda, Mr. FitzSimons, Mr. Isler, Mr. Murphy, and Mr. Reynolds voted that the request will not comply with zoning provisions.

G) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request does not enhance the objectives of the CPD zoning. Mr. Murphy voted that it does.

Mr. Roosa asked the Council to vote on the remaining paragraphs in Section D:

1) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that proposed uses are not appropriate for the site. Mr. Murphy voted that they are.

3) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that urban services are not adequate to serve the proposed use. Mr. Murphy voted that they are.

4) Mr. Roosa determined that this question does not apply.

**Motion:** Mr. Isler moved and Mr. FitzSimons seconded that the request to rezone from TFC-2 to CPD be denied. Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted in favor of the motion. Mr. Murphy voted against the motion. The motion passed.

## **X PUBLIC HEARING OF VESSEL SAFETY ORDINANCE**

Mayor Cereceda read the titles and opened the meeting for public comment.

### **A SCOTT PORTER**

Mr. Porter stated that Section 8, which prohibits floating vendors, would end his business for which he is already licensed. He is commercially registered (although no one else may board his boat because he is not a captain), and he is inspected by the health department. He operates about six months of the season, and has been in business for a year.

Marsha Segal-George stated that this is the only license that would be affected. Mr. Roosa suggested adding, after a comma, "except those with 1997 Lee County floating vendor licenses based in Fort Myers Beach and having no more than one boat." Mr. Isler asked if the business could then be sold later and he was told that it could.

### **B SANDI SUTER**

Mrs. Suter doesn't think the Town needs floating vendors, and she is concerned that we are guaranteeing that Mr. Porter has a corner on the market and that might be considered restraint of trade.

### **C BILL PERRY**

Mr. Perry vouched for Mr. Porter, and said that the Town should not take away his business. He suggested having a cap on the number of floating vendors allowed instead of grandfathering Mr. Porter. He stated that everyone else who has tried this business has gone out of business, so there is not a problem with cornering the market. He also stated that it is not fair to say that rental jet skis must go out 1000 feet, and then allow private ones to only go out 500'. In addition, you could have powerful power boats at 500 feet, but the small personal watercraft must go out 1000'. He thought travel should be slow speed for 1000', except in channels, where travel would be at posted speed.

### **D LINDA KANE**

In 1995 she applied for a floating vendors license and was denied because they said they no longer do floating vendors. She must pay high rental on beachfront property year round and it is unfair that Mr. Porter can operate only 3 months and not pay any rent.

### **E HEIDI MIHAILOFF**

Ms. Mihailoff stated that she has no problem with requiring 1000 feet, except that it is a safety factor, since the water is much deeper, and most of the renters are not experienced, are minors, or are elderly. She would like the ordinance to state that in case of emergency, the rental owner can ignore idle speed so that the operators can get out to their renters more quickly. Regarding floating vendors, she is limited from serving tourists on the beach, yet he can serve from a boat.

### **F JIM WILLIAMS**

Mr. Williams questioned the placement of the buoys. They are at 500' and are set by the county, and he wondered if they would be moved out if the council moves the line to 1000'. The rule needs to be consistent. Regarding floating vendors, he recommends taking that definition out of the ordinance, because they are all excluded anyway.

### **G SCOTT PORTER**

Mr. Porter stated that his license is tied to the restaurant, and perhaps if Ms. Kane was turned down for a floating vendor's license, it was because she was applying for another type of business.

The public hearing closed.

**Motion:** Mr. FitzSimons moved that in Section 9(1), the wording be changed to "all waters within 1000 feet offshore from all beaches or offshore structures, except within marked channels" and that the last sentence of the paragraph be eliminated. There was no second. The motion died.

**Motion:** Mr. Murphy moved and Mr. Isler seconded that the words be added to Section 8 “except vendors with 1997 Lee County floating vendor licenses who are based in Fort Myers Beach and have only one boat.” The motion passed unanimously.

**Motion:** Mr. Isler moved and Mr. Murphy seconded that the ordinance be accepted with the above change. Mr. Isler, Mr. Murphy, Mayor Cereceda, and Mr. Reynolds voted in favor of the motion. Mr. FitzSimons voted against the motion. The motion passed.

**Discussion:** Mr. FitzSimons stated that he thought the area for slow speed should be 1000'. Marsha Segal-George offered a compromise. Since enforcement is a major issue, she suggested that after the Council passes all three water ordinances, that they give them 6 months to see if enforcement fixes some of the problems, then the Council can revisit it.

## **XI FIRST READING OF JET SKI ORDINANCE**

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

### **A BARBARA KEENE**

Mrs. Keene lives on the back bay and is concerned about jet skis on the back bay. There are fishermen sitting quietly around the mangrove islands, and there is an opportunity for collisions and for damage to the sea grass. The eco tours cannot hear over fast speed, but could hear if they are kept at idle speed. She would like the slow speed zone extended to 1000 feet.

### **B JOHANNA CAMPBELL**

Mrs. Campbell pointed out that some rookeries have been lost on the back bay because the jet skis have been going around the mangroves and scaring off the birds. The 1000' limit was supported in the LPA meeting by all the vendors. If you want the tourists to come and see the birds, please do not disturb them. She asked the Council to keep the slow speed zone at 1000 feet.

### **C KATHLEEN FISHER**

Ms. Fisher, of CRA Services, stated that jet skis are very small part of all the craft in our area. She does not think 1000 feet is too far. She would rather have her renters out farther where there is less congestion. She also spoke about the point that licenses are on commercial property, and they do not need to be tied to hotel rooms. She also asked the Council to provide the variance for their Dolphin Venture Tours that has been in business for three years.

### **D BILL PERRY**

Mr. Perry, of Aqua Sports, said that he has talked to two jet ski manufacturers who have volunteered to lease the Town (for \$1.00) vehicles to be used for enforcement. He recommends the Town take them up on it and get it done in time for this season. The officers would be riding on vessels that can go up to 60 MPH so they can pull over most vehicles. He warned the Council that they cannot discriminate against personal water craft or they will face litigation by the manufacturers. If the Council moves the slow speed zone to 1000' for rentals, it should be for everyone. He said it is no problem to see the jet skis at 1000 feet. You can see a boat at one mile.

### **E JOHN MULHOLLAND**

Mr. Mulholland agrees about enforcement or the ordinance is worthless. He said it is an excellent idea to get vehicles from the manufacturers.

### **F HEIDI MIHAILOFF**

Ms. Mihailoff agreed that it is not a problem to see the jet skiers at 1000 feet, but it takes longer to go rescue them in case of an emergency. She understood that floating vendors are to service people on boats and parasails, not to people on the beach. If they are selling to people on the beach, they should be required to have restroom facilities.

### **G JIM WILLIAMS**

Mr. Williams mentioned that on page 2, eco tours on jet skis must stop in order to communicate. He mentioned that since the Council just passed 500' limit on the vessel safety ordinance, then this one should agree. He mentioned the paragraph that allows vendors to have jet skis moored in the water, and he is afraid it looks like you could have floating waverunner stands. He likes the statement that PWVL license holders must comply with the Land Development Code.

The public hearing was closed.

Mr. Isler mentioned that on Section 27-54, the wording after the semicolon should be “or east of Big Carlos Pass Bridge”.

Marsha Segal-George stated that the LPA had put in a section for a variance if a vendor wants to apply for more than eight skis. They will have to make a separate application to the Council.

Mr. FitzSimons asked if they were going to leave this ordinance at 1000’, if all other boats can go fast after 500 feet. He also stated that Section 27-48(a3) needs to be changed to ½ hour before sunset and ½ hour after sunrise to conform to Coast Guard regulations.

Mr. Isler questioned whether there is a plan to post the rules around the rookeries better. Marsha Segal-George stated that the Town can only take the lead in our jurisdictional waters. She hopes having a seat on the Arnold Commission will help.

The ordinance was set for second public hearing on December 2.

The Council took a break at 10:15 PM and reconvened at 10:25 PM.

**XII DRAFT DISCUSSION OF PUBLIC SERVICE TAX ORDINANCE**

Marsha Segal-George recommended that this be moved to the next meeting. She explained that this ordinance is necessary in order to stake out the town’s territory, but that it needs more work.

**XIII RESOLUTION OPPOSING OIL AND GAS EXPLORATION IN THE GULF**

All members of the Council were in favor of sending this resolution to the Governor.

**XIV RESOLUTION ON NATIONAL FLOOD INSURANCE PROGRAM (FEMA APPLICATION)**

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

**XV COUNCIL REORGANIZATION**

**A ELECTION OF MAYOR AND VICE-MAYOR**

Mr. Reynolds asked the Council to consider following the policy that Sanibel has of rotating the mayorship and vice-mayorship each year. He nominated Mr. FitzSimons for mayor and Mr. Isler for vice mayor, but they both declined the nomination.

Mr. Isler nominated Anita Cereceda for Mayor and Ted FitzSimons for Vice-Mayor.

The vote was unanimously in favor.

**B CHANGES IN ASSIGNMENTS**

The Council agreed to leave the assignments unchanged.

**XVI TOWN MANAGER’S ITEMS AND REPORTS**

The Town Manager had no items to bring before the Council.

**XVII TOWN ATTORNEY’S ITEMS AND REPORTS**

The Town Attorney had no items to bring before the Council.

**XVIII PUBLIC COMMENTS AND INQUIRIES**

There were not public comments.

**XIX ADJOURNMENT**

The meeting was adjourned at 10:35 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary