FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 20, 2003
Town Hall-Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER: The regular meeting of October 20, 2003 was called to order by Mayor Daniel Hughes on Monday, October 20, 2003 at 3:00 P.M.

Members present at the meeting: Mayor Daniel L. Hughes, Vice Mayor Terry Cain, Councilman Bill Van Duzer, Councilman Bill Thomas, and Councilman Howard Rynearson.

Excused absence from the meeting: None.

Staff present at the meeting: Town Manager Marsha Segal-George, Service Delivery Director Damon Grant, Community Development Coordinator Dan Folke, Town Attorney Richard Roosa

II. PLEDGE OF ALLEGIANCE: All those present assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REV. RICHARD PALMER, ST. RAPHAEL'S EPISCOPAL CHURCH

IV. PUBLIC COMMENT: Public Comment was deferred until the individual Public Hearings.

V. CONSENT AGENDA:

A. Approval of Minutes – September 22, 2003 and October 6, 2003

Mayor Hughes withdrew the minutes of October 6, 2003 for corrections.

MOTION: Motion was made by Councilman Rynearson and seconded by Vice Mayor Cain to approve Consent Agenda with the exception of the October 6,2003 minutes.

VOTE: Motion was passed by unanimous vote.

B. Resolution – Lake Okeechobee

C. Request approval for revised TBE Contract

D. Resolution and Memorandum of Agreement for Bridge Maintenance

VI. ADMINISTRATIVE AGENDA:

A. Public Hearing – Property located at 216 Miramar St. (off Estero Blvd., approx ½ mile S from Times Square), Fort Myers Beach, in S19-T46S-R24E, Lee County, FL

Mayor Hughes announced the applicant as Jason Lucas, Case No. Variance 2003-42. They are seeking three variances in a residential conservation district from the Land Development Code Table 34-3 which would affect the minimum side lot, non-water lot, waterfront

lot setback on both sides and the rear of the lot. He asked if there had been any ex parte conversations on this matter. All of the Council members had met with the Lucases and visited the property.

Jason Lucas came forward and cited the Staff Report and LPA recommendations pertinent to the case. He said that it is generally agreed that this is an exceptional situation in that the deck in question has been in existence since 1987, verified by the previous owner who is also present. As new owners they were never informed that the existing deck might not be in compliance nor did they know the age of the deck. When they purchased the property there were no code violations shown and they had no knowledge of any non-compliance. It was six months after they obtained a permit to raise the house and replace the deck and had completed much of the work that they were notified of being in non-compliance. Since the deck has been there for fifteen years and the neighbors had complained to Code Enforcement previously, he did not understand why he is being cited at this time. The neighbor to the East purchased his property after the Lucases purchased the subject property.

Sherry Lucas came forward and referred to a letter sent to the Scotts to revoke their deck permit which was mis-addressed and had not been received. The Scotts told her that Code Enforcement had been to the property on numerous occasions and had never mentioned that the deck was improper. The letter to the Scotts had both 216 Miramar and Orange Grove Boulevard on it. The Lucases have contacted their surveyor, who has verified the accuracy of the original survey. She provided copies of a new survey which they obtained showing an encroachment by seven tenths of a foot of the neighbor's fence post onto their property. The neighbor's fence was installed after the Lucases purchased the property and after they had received a stop work order. She also provided copies of the building permit showing the setbacks, the two surveys, and some photographs taken wherein the fence post is right against the deck post, and a photo which includes the orange survey marker and the fence post with respect to the Lucases' property line and also indicating that there is encroachment. These items were entered as exhibits.

Mr. Lucas said that everyone who inspected the work had liked what was being done and he was surprised that there was any opposition. He invoked the term equitable estoppel which pertains to misrepresentation or concealment as he feels it applies in this case. He feels that they did everything possible to abide by the law and have openly submitted their plans in obtaining permits and approvals and that it is unfair to require that everything be torn down after much of the work has been done. They have spent approximately $3,000.00 on the deck and would lose not only that sum, but also the enjoyment of the deck and the property value with the deck as an amenity. He has received an estimate of $10,000.00 to tear everything down which would place a considerable burden on him and his wife.

Mayor Hughes asked why the variance being requested is not limited to the existing deck. If it could vary from five feet to one foot the situation could be made worse.

Mr. Lucas also introduced photographs that had been taken of other older properties in different locations around the Island which he said showed similar setback situations.

Mrs. Lucas also introduced as evidence the Lee County Property Appraiser's record showing that the house had been built in 1933 and showing that it has a deck. She said they had no knowledge of the age of the deck from this record.

John Hagan with the Lee County Division of Zoning came forward and referred to his Staff Report dated August 28, 2003, previously submitted to Council. Staff is recommending denial of all three variances. A permit had been issued in 1991 to reconstruct the deck. They are unable to locate a copy of this permit. Then in 1992 a letter was issued signed by Mr. Stewart, a Building official (attached as Exhibit C to the Staff Report) telling the owner to stop work and tear down what had been built because it had been determined that it was not in compliance with the permit but had been built larger than what the permit specified. He had no comment on the issue of the letter's address other than to say they use either the tax rolls or information in their own files to send such letters. He said the Property Appraiser's records show the deck as having been added in 1993. The permit obtained last year by the Lucases was issued in error because it was incorrectly assumed that the deck was a legal nonconforming use. He recommended to Council that if the variance is approved, it be conditional that it be as depicted on Exhibit B of the Staff Report as per Mayor Hughes' question above.

Councilman Rynearson asked why the permit was issued if there had been a previous error and whether the Lucases should be penalized for the error.

Pam Houck said the case was reviewed based on the land use issue of the location of the structure. There are many other elements within this variance which she believes is a legal issue and not one that Staff can address.

Councilman Thomas criticized the Staff Report recommending denial because the loss of the 1991 permit and incorrect address were in his opinion negligence by the Government which should not place a burden on the applicant. Mr. Hagan said that there is a time frame for retention of permits.

Vice Mayor Cain inquired whether there was any way of knowing what the old deck looked like, and Mr. Hagan said there was none unless an old photograph was located.

Mayor Hughes opened the meeting for public comment at this time with a three-minute limitation on each speaker.

Marc Beaudin of 210 Miramar Street, Fort Myers Beach came forward and read a letter which he had presented to the Council (Attached as Appendix A to these minutes.)

Mayor Hughes asked if Mr. Beaudin was personally involved in contacts with the County when the deck was built, and Mr. Beaudin replied that he was. Mayor Hughes asked when the property was converted to a duplex, and Mr. Beaudin said in 1994 or 1995. Mayor Hughes asked if it has been used as a duplex ever since, and Mr. Beaudin said it has not. The County put a stop to that usage after he went before the County Hearing Examiner, and the house had also been abandoned for a period of time.

Councilman Rynearson asked if there have been any complaints about rowdiness and loud parties since the new owners purchased the property. Mr. Beaudin said that it hasn't been occupied that often but that there have been parties, and towels were left outside for weeks. Councilman Rynearson criticized the County for the lack of enforcement and follow through, placing the burden on the Town to correct the situation.

Sidney Scott, the former owner who erected the deck, came forward. He claimed that Mr. Beaudin's driveway encroaches on the property and described conflicts and disagreements with this neighbor over the years. He said the previous owners told him of problems with the Beaudins also. Mr. Scott said he had intended to improve the property by replacing the deck and had obtained a permit and survey as required in 1987. Mayor Hughes verified at this point that Mr. Scott had been sworn prior to giving his testimony. Mr. Scott said he never received a letter to stop work and that the Code personnel had been to the property a number of times without giving any adverse comments.

Susan Scott, wife of Sidney Lucas, came forward. She described some additions done by the Beaudins that she said were done without a permit. Mayor Hughes asked her what year she and her husband acquired the property and whether they were the owners who had sold the property to the Lucases. She said they bought it in 1986 or 1987, the same year they replaced the deck, and that they had sold the property to the Lucases.

Scott Shelkey of 217 Miramar Street, Fort Myers Beach came forward. He said he lives directly across the street having first moved there in 1996 when the subject property was a rental owned by the Scotts. He said the house was stigmatized as a drug or crack house but that this activity ceased after the duplex reverted back to single family use. He feels that none of the parties are responsible but that the County should be held accountable.

Dorothy E. Beatty of 281 Ohio Avenue, Fort Myers Beach, next door to Walter Staley, came forward. Her back porch faces the subject property and she witnessed the deck being built. Her problem was with the partying and loud noise from the rental and she fears that continuing rental use will result in similar problems.

Letitia Staley of 275 Ohio Avenue, Fort Myers Beach came forward. They are directly in the rear of the Lucas' property. She is concerned with the survey in that the new deck post is six inches from their property line, not one foot. Mayor Hughes asked where it was before, and she said it was further back but right on the property line. It was asked if she is the owner of the house with the pool, directly behind the Lucases, and she said this was correct.

Ken Tribble of 226 Miramar Street, Fort Myers Beach came forward. He lives on the North side of the subject property and objects to the deck as intrusive and an invasion of his privacy. He addressed the 5 criteria in the Code for granting variances. He acknowledges that

the County has made mistakes. He bought his property in May 2002 just after the Lucases purchased the subject property and has done a great deal of research into the past and present permits. He consulted Mr. Folke and was told that the deck was grandfathered in. Mr. Tribble has concerns about how the property will be used in the future in view of its past history. He said that most of the neighbors are against approval of this variance and asked that it be denied.

Councilman Rynearson wanted to verify Mr. Folke's conversation with Mr. Tribble and was told by Mayor Hughes that Mr. Folke's reply to Mr. Tribble was correct because at the time there was no record of the revocation of the permit. Councilman Rynearson then verified that Mr. Tribble had known of the permit's revocation at the time he spoke with Mr. Folke and asked why he didn't make Mr. Folke aware of this. Mr. Tribble replied that he did.

Mayor Hughes asked Mr. and Mrs. Lucas if they had any rebuttal. Mrs. Lucas described a rental agreement that they have prepared which is intended to prevent the abuses that have occurred in the past and doesn't feel they should be stigmatized for past history. She wanted to clarify that the variance is for the existing deck and that they do not intend to enlarge it even further. Mr. Lucas added that they have tried to be good neighbors and have done nothing wrong. They have spent more time in residence at the house than there have been tenants, and in answer to Mayor Hughes' question said they would prefer to keep the house and live there in retirement.

Mr. Folke came forward and verified that his research into the permit revealed that to his knowledge this was a legal nonconforming use. Nothing to the contrary was apparent. There was no evidence presented that there had been a code history on the property.

Mayor Hughes had a hypothetical legal question of Town Attorney Richard Roosa. He said that he believes that equitable estoppel applies in this case, but that he doesn't feel they can meet the 5 requirements of the variance. So if one felt that they can't meet the variance but the doctrine of equitable estoppel applies, what is the remedy? It would seem that the County, as the Town's agent, is estopped from requiring the tear-down having issued a permit to do that work. Mr. Roosa replied that he believes equitable estoppel must be applied to each of the elements of the variance, and if there is an element for which they do not qualify a decision be made as to that particular element and whether the Town is estopped from disqualifying them. Mayor Hughes said that if they had not built the deck and were seeking a variance there would be no question, the request would be denied. But since they have done the work in reliance on an error he has a dilemma with resolution of the matter. To Councilman Rynearson's question as to which of the 5 points he disagrees with, Mayor Hughes replied that he is in agreement with the Staff's recommendations, but that these are not the result of the actions of the applicant.

Mr. Rynearson asked Mr. Roosa whether the Government doesn't have some responsibility since it issued the permit. Mr. Roosa said that it doesn't automatically follow that an error by the Town or an employee of the Town would grant the variance. One possibility would be in the event of a pre-existing nonconforming structure. He suggested a finding that the structure was pre-existing meaning it was validly constructed but it is non-conforming to the current code. This does not allow a variance, but comes under a different category of modification. There was discussion about whether this is a legal or an illegal nonconforming use and the history of this case as well as equitable estoppel versus issuance of a variance. Mayor Hughes pointed out that whatever the decision there will be injured parties.

MOTION: Motion was made by Councilman Van Duzer that a variance be approved in the subject case having found that there are exceptional or extraordinary conditions or circumstances, that the conditions are not the result of the actions of the applicant, that the variance granted is the minimum variance that will relieve the applicant, and that the granting of the variance will not be injurious to the neighborhood, that the condition or situation of this specific piece of property or the intended use of the property for which the variance is sought is not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulations. Motion includes provision that approval of this variance is subject to conditions: (1) That the footprint of the decks in question cannot be altered to other than the footprint shown in Exhibit B; and that if this existing structure is removed for any reason or purpose that it must be rebuilt with proper setbacks. This means by act of the property owner or by natural causes. Motion was seconded by Councilman Rynearson.

VOTE: Motion was passed by unanimous vote.

B. Harbor related consulting services

Town Manager Segal-George introduced Hans Wilson and Michael Poff who are available for questions if desired. What she is presenting constitutes all the harbor services left to complete prior to having the harbor up and running. Mr. Wilson and Mr. Poff are working jointly on the landing area at the end of Old San Carlos, which has been prioritized due to the possibility of grant funds being available. Per her memo, there are $16,400.00 worth of consulting services not covered by the grant that will have to come out of the Town's budget. Over $308,000.00 has been secured in grant money.

MOTION: Motion was made by Councilman Van Duzer and seconded by Councilman Thomas to approve the above item.

VOTE: Motion was approved by unanimous vote.

C. Canal Project Update

Town Manager Segal-George explained the next steps on this project. A test case is desired and this is a way to attempt to solicit interest in these canal neighborhoods to determine interest. She outlined a proposed letter to get input from property owners with the knowledge that they will be required to pay part of the cost, and that they are not obligating themselves by replying to the letter. She further described the necessary logistical steps for carrying the project forward such as a spoil disposal site. Cost to dredge each canal will be determined individually, and at that time property owners can make the decision whether or not to proceed. This process is to establish a template for the overall project. The process was described. Council has already approved this project, and it has been approved by MRTF. No action is required; this is an update only.

D. Discussion of Parking Meters *recommendations from TSA to follow

A memo concerning the Times Square Advisory Committee recommendation was provided to the Council. Mr. Folke gave a brief overview. The recommendations are (1) Fine amount reduced from $32.00 to $16.00 (fines will be limited to one per day with no stacking); (2) Hours of enforcement to be 9:00 A.M. to 7:0 P.M. instead of 9:00 A.M. to 9:00 P.M.; (3) Hourly rate to remain at $2.00 everywhere except under the Matanzas Bridge, where it will be reduced to $1.00 per hour; and (4) Resident Parking Passes will be issued to Fort Myers Beach property owners and/or residents who are registered voters. The effect on revenue was addressed. After discussion with Central Parking Systems Mr. Folke stated there would be a total projected reduction of approximately $248,000.00 broken down as follows: (1) Fine amount reduction, half, or $100,000.00; (2) Hours of enforcement $102,000.00; another $30,000.00 in coinagefor no multiple tickets; and (3) reducing the hourly rate, $16,000.00. There was no projection on the number of parking passes that would be sold. Mayor Hughes questioned the projection with respect to hours of enforcement, saying this seems high for two hours. Mr. Folke said that it was determined by using a straight two-hour percentage and that he was trying to provide a worst-case scenario. Ms. Segal-George pointed out that the program has only been in operation five months. Mr. Folke discussed the projected losses with respect to the time of year and said that he felt any deficit would easily be made up during Season.

MOTION: Motion was made by Councilman Rynearson that we wait one year before making changes to allow more concrete figures to be compiled. There was no second to the motion.

Mr. Folke stated that TSAC also provided in their recommendation that the subject revisited after the anniversary date in May. Mayor Hughes asked if the cost of changing the meters had been considered, and Mr. Folke said this is very simple to accomplish.

There was discussion about the projected loss of revenue and how the figures were compiled. There are 60 meters under the Bridge including the Farmers' Market' total not including Beach access is 92.

Councilman Van Duzer recommended tabling the issue for 30 days to allow more time to review the projected loss in revenue.

Mr. Folke advised that the biggest issue with the merchants had been the fine amount.

Councilman Thomas suggested that the first hour of parking be free on Old San Carlos in order to accommodate customers and stimulate business. Methods of accomplishing this were discussed.

Mayor Hughes said that there are people in the Chamber who feel very strongly that $2.00 per hour is excessive. He said that there are many communications opposing the rate and the fines and feels that some adjustments are needed, but he questioned cutting the fine in half.

Councilman Van Duzer recommends cutting the rate from $32.00 to $25.00, not $16.00 so parking all day would result in a more stringent fine. He also agreed with a 7:00 P.M. end of hours of operation and also to leave the parking fee at $2.00 per hour. He would address parking passes at a later date. He would like to extend passes to all Island residents. There was discussion about business owners who do not reside on the Island and the issue of parking passes for employees. Ms. Segal-George pointed out that Staff had made no recommendations with respect to parking but that these recommendations have come from the merchants although there is the misconception that they have originated with Staff. She also noted that many cities subsidize parking and may take money out of the general fund to make up any shortfall and that this may be the consequence of any decision.

Use of trolley service for employees versus parking passes was discussed.

It was agreed that this item will be continued and placed on the agenda for the meeting on November 17, 2003.

E. Change order for Holiday Shores Drainage Project

Ms. Segal-George requested that this agenda item be addressed out of order, prior to Item D, for the convenience of the consultant, Mr. Edenfield. Mr. Folke explained that this change order is for Holiday Shores, Matanzas Street. This project was originally contracted to Utelco with a contract price not to exceed $43,000.00. Utelco is no longer with us and the second bidder is considerably higher. A change order of $25,000.00 is requested to complete the project.

MOTION: Motion was made by (inaudible) and seconded by Councilman Van Duzer to approve the change order for Holiday Shores Drainage Project.

DISCUSSION: Mr. Van Duzer requested that the project be completed.

VOTE: Motion was passed by unanimous vote.

At this point, since it was not yet 6:00 P.M., Mayor Hughes took Agenda Items VII, VIII, IX, and X out of order and heard Council Member Items and Reports at this time. The Town Manager and Town Attorney had no items to report. One individual came forward with public comment on the canal issue. Mayor Hughes adjourned the meeting for the dinner break at 5:53 P.M.

Break for dinner at 6:00 to 6:45 P.M.

Mayor Hughes reconvened the meeting at 6:47 P.M. He had informed some persons that they could address the Council at 6:30 P.M. not realizing that the meeting was to commence at 3:00 P.M. He invited anyone with public comments on other than the parasailing issue or land development code issues to come forward at this time.

Lenore James of 11811 Caraway Lane, Fort Myers came forward to speak about the proposed San Carlos overpass. She feels the overpass will be detrimental to the area. She is concerned that there will be insufficient signage to alert motorists and that people will

inadvertently enter the overpass and be past San Carlos Boulevard without intending to do so. She asked that Council follow Sanibel in opposing the overpass.

Robert Hughes, Jr. of 5222 Sunset Court, Cape Coral came forward and described the traffic situation which he does not feel is objectionable. He does not feel the overpass is justified. He feels there are sufficient provisions for hurricane evacuation and that the area will deteriorate with construction of the proposed overpass. He requests that Council oppose this overpass.

Bill Westerman of 11404 Caravel Circle, Fort Myers was present but his comment was inaudible.

Scott Hubbard, manager of the Albertson's at the corner of San Carlos and Summerlin, came forward. This is his second appearance before the Council. He is here because Lee County Commissioner Ray Judah told them that if the City of Sanibel, the people and the City of Fort Myers Beach were all against the overpass, then he questioned why it would be built. Mr. Hubbard said he has seen other instances wherein businesses have left as a result of overpass construction. An overpass would reduce traffic and those who depend on Season, as he does, would not be able to survive.

Councilman Thomas inquired whether Council would take a position. Mayor Hughes replied that the item was not on the agenda and could not be acted upon at this time, and that no information had been received from the County, so it would be fair and equitable to have the County make a presentation prior to taking a position. He asked Town Manager Segal-George to arrange for such a presentation by County DoT. After general discussion it was agreed that this will be done and an attempt made to get this on the agenda during November, perhaps during the zoning hearing on November 10, since it must be acted upon by December 2003.

F. Discussion of Lee County Transit Options – Steven Myers

Mr. Steve Myers of Lee County Transit presented information about transit in Lee County. After meeting with all of the staff of all of the cities and towns and he had presented summaries of those meetings. It was found that there was insufficient revenue for present level or service let alone room for growth. A study of long term funding and last May there was a workshop presenting the options presented by the consultants. A MSTU was suggested in the short term and a transit authority be formed for the long term. Fort Myers was unable to participate because of a municipal cap which would be exceeded with a levy for this purpose. He gave a summary of funding sources over the past several years. They appreciate the contributions from the municipalities and feel that the cities and towns should be involved not only in funding but in planning the services. They have incorporated customer input into their schedule and feel it is working very well. Different options of funding were discussed including sales tax and impact fees. The consultant, Tindale Oliver and Associates, made some recommendations including making the regional transit authority a priority. In the interim the County should fund the existing system and the municipalities should fund transit improvements within their jurisdictions, or create an MSTU that would deal only with growth in the services. Transiting the gas tax to 100 per cent ad valorem was also suggested to spread the cost to the entire county. Impact fees are not considered appropriate at this time because they relate primarily to capital improvements and not operating costs. His presentation pertaining to millage rates excluded Captiva, Upper Captiva, Useppa, Gasparilla, and Cabbage Key. He showed their current 5-year development plan showing where services are scheduled to be added. Many of the improvements cross jurisdictions. There is a full-year trolley scheduled for Fort Myers Beach and also a Seasonal trolley during the 5-year plan.

If it is desired to move forward with the smaller MSTU as suggested above, it would be necessary to prepare an ordinance for joint adoption by each municipality and the County. This has to be done by January 2004 if it is to be included in FY 2005 budget cycles.

Vice Mayor Cain questioned the projected millage rates. Mr. Myers replied that one of his slides showed .05 and that using the FY 04 assessed valuation the millage for the adjusted unincorporated MSTU and anticipating no participation by the barrier islands .0305 in Year One, .0520 in Year Two, .0677 in Year Three, .0885 in Year Four, and .1327 in Year Five. The existing plan has a great increase in service in Year Five, and the ten-year plan has an even greater increase. He pointed out that those projections are conservative with a 7 per cent annual increase in their operating cost and only a 6 per cent growth in assessed valuation.

Mayor Hughes requested clarification on the transition from MSTU to a regional transportation authority. Mr. Myers felt that such an authority would be applicable because of the number of municipalities wishing to have input in the regional transit services. There is existing legislation at the State level for creation of such an authority. It also requires referendum to establish, and it would have taxing authority if adopted. This is seen as a long-term solution which will require time to educate the public and obtain support. The consultants estimated this would take 3 to 5 years; Mr. Myers feels it would be at least 5 years before this could be implemented. The MPO has directed their staff to study this issue in detail. Mayor Hughes asked whether there was any maximum levy in the statute, and Mr. Myers said there was a 3 mill maximum limitation.

Councilman Van Duzer referenced the traffic mitigation study and the need for alternative forms of transportation and felt the Council must work closely with what Mr. Myers is proposing to determine the Town's most appropriate course of action. He was apprehensive about the ease with which an MSTU can be created and the imposition of an additional tax on the public. He also asked whether the transit authority were a necessity. Mr. Myers said that the issue is that in order to grow and plan for the growth there is a need for a longer horizon than one year at a time. The authority would enable long range planning.

Mayor Hughes asked Mr. Myers for a pro forma for creation of an MSTU for a reasonable number of years, the projected tax effect and the benefits to the Town.

Vice Mayor Hughes asked what would happen if one or more municipalities declined to participate in an ordinance. Mr. Myers said that this question had come up before, and it had been determined that than 100 per cent participation would not be necessary.

Mr. Van Duzer pointed out that while Fort Myers Beach is built out and has a relatively stable population, there is need for a better transit authority in Lee County is because of the tremendous growth in the County. Mr. Myers recognized the fact that one of the main reasons people come to this area is for the beaches, and they will be visiting, which will affect the Town.

G. Public Hearing on Ordinance 03-09 Para Sailing

Mayor Hughes announced the first public hearing on this ordinance. A number of people were present at the last meeting which was only a reading and not a public hearing; however, some comments were heard at that time. Since then there has been another MRTF meeting and there will be a report on that.

Mayor Hughes read the ordinance.

Damon Grant read the revisions recommended at the MRTF meeting of October 15, 2003. The original recommendations for amendment were the 1,000 feet from shore being increased to 2,000 feet. The first violation be a 30-day suspension, second 90-day suspension, the third violation a 3-year suspension. The revisions from the October 15th meeting read, "Operators must not have customers and/or renters within 1,000 feet from shore." and "Operators must not fly the chute over or within 500 feet of the pier or within 1,000 feet of the beach." The penalties were also revised to include not only the owner but the captain of the vessel as well. The captain's first offense would be a $500.00 fine; second offense $1,000.00 fine; third offense $2,000.00 fine. The owner's first offense was a 2-day suspension instead of 30 days; second offense 7-day suspension instead of 90 days; and third offense a 21-day suspension of license instead of 3 years. "The Town shall consider license revocation for more than three violations of this ordinance, and in addition the violator shall pay all costs and expenses involved in the case." The 3-year violation free period was retained and would allow prior violations to be removed.

Town Manager Segal-George called attention to a legal opinion in Council's packet from Town Attorney Roosa regarding the 2,000 feet. Mayor Hughes was aware of this and that Mr. Roosa had given his opinion that the Town has no jurisdiction beyond 1,000 feet.

Vice Mayor Cain, who chairs the MRTF, said that the intent of the MRTF recommendations were not to put anyone out of business, but addressed the issue of violations and fines as well as safety issues. MRTF also considered the issue of the captains being liable. It was also intended to discourage deliberate offenses for advertising purposes and also to discourage repeat violations. The wording has been simplified to provide for no inflating or deflating of the parasail within the Town's jurisdiction of 1,000 feet and while flying.

Mayor Hughes asked about the breakdown between “captains” and “owners” and pointed out that these are not defined in the ordinance. Town Manager Segal-George stated that the ordinance does mention captains in that the captains are regulated by licensing authority. There was a discussion about the language in the ordinance identifying the parties.

Mayor Hughes opened the meeting for Public Hearing.

Richard Ramadan, who operates a parasail operation at the Lani Kai, came forward. He feels the Town is hostile toward the parasail industry and expressed concern that the 5 or 6 industry operators were not invited to give their input to MRTF. He said that it had been determined that the accident of two years ago was caused by poor equipment, operator negligence and ignorance. He feels that the proposed regulation would not prevent an accident. The imposition of fines and penalties may make it difficult to hire well qualified and experienced captains because they will look for work elsewhere. He feels there has been misinterpretation and misunderstanding of the existing ordinance and suggested a yearly meeting and discussion. He feels that if the new ordinance is adopted, there should be 1,000 foot buoys. He feels all parasail people should inflate their chutes at the 500 foot mark to check the chutes but no customer launched or harnessed into the chute until the 1,000 foot mark was reached. With respect to safety, if a captain makes a mistake he has to answer to the U. S. Coast Guard and can lose his ability to work. This is a very strong penalty in itself, and captains are aware that they can lose not only their license to captain a parasail vessel, but any vessel. If there is to be a fine structure, he feels it should be fair with every business on the Beach. He feels that it will not always be possible to observe the 1,000 foot limit because of prevailing conditions offshore and the actions may not always be deliberate. He feels the fines and penalties are too harsh.

Chris Weber from Mid-Island Water Sports and Estero Island Parasail came forward. **(Inaudible)**

Bill Steinke of Wind and Water Sports at 3040 Estero behind Junkanoo’s Restaurant came forward. He is also concerned that no industry representatives have had the opportunity to address MRTFand provide input regarding technical aspects of the industry. He also pointed out that wind direction affects the operator’s ability to comply with distance requirements. In his opinion the fines are arbitrary and will be difficult to enforce. He agreed with Mr. Weber’s statement that they can be excessive. He also referenced other types of legislation and penalties, and the opportunity for appeal. He also asked how the actual dates of the suspension periods would be determined and the time frame for determining subsequent offenses. He felt there is much ambiguity and potential for excess and that with cooperation the issues could be resolved. He feels the existing monetary fines are appropriate and that subsequent to enforcement there have been no violations.

Mayor Hughes asked Mr. Roosa whether there would be a hearing for a violation of the ordinance and was told that there would be a hearing. He then closed the public hearing and continued this item to November 3, 2003 at 6:30 P.M.

Town Manager Segal-George asked about the most recent recommendations and was told they should be incorporated. Mayor Hughes still had questions about the definition of captain and operator.

Vice Mayor Cain pointed out that the MRTF meetings are open to the public and are advertised so that anyone who wishes to attend can do so, and that there are representatives from the parasail industry on that committee. It was asked when the next meeting would be, and the questioner was told that parasailing would not be on future agendas of MRTF because the matter is now in the hands of the Council. Town Manager Segal-George said that the committee meetings and agendas are listed on the Web, posted on the door of Town Hall and at the library, and information can also be obtained by calling Town Hall.

H. Public Hearing of Ordinance 03-11, Amending Chapter 34 of the Fort Myers Beach Land Development Code, Section 34-3048. Ancillary Temporary Uses in Parking Lots; adopting a new Section 34-3051. Temporary Welcome Stations.

Mayor Hughes read the caption of this ordinance.

Mr. Folke reported that on March 3, 2003 when the Town adopted the new Chapter 34, which is the zoning code, a new temporary use section was adopted to allow welcome stations.

Under the existing rules a welcome station is allowed for a maximum of 90 days. Under the temporary use section a permit could be obtained once every 6 months. Council expressed some desire to change and extend the time periods so it is appropriate to define welcome stations and consider some standards to apply to this type of use. The LPA has heard this twice and made some changes. Their recommendation is attached.

Section A of the new section 30-51 applies to the definition of welcome stations, which was referenced by Mr. Folke. He also created a new administrative way for approval of welcome stations which would not require any public hearings. He has included the referenced standards. He recommended to the LPA was a maximum 6-month period to be chosen by the applicant; however, the LPA recommended a permit for a maximum of 30 days with a maximum of 3 permits per year.

The LPA also wanted to create a method for approval of a longer period of time, so a special exception process was created which would include public hearings. This would require more planning on by the applicant.

Mr. Folke felt that the main issue is the length of time these facilities would be allowed.

Mayor Hughes opened the meeting for public hearing.

D. J. Petrocelli from the Fort Myers Beach Chamber of Commerce was recognized and came forward. He said they could accept a 6-month limitation and would like to be on the Beach. There are three locations which they have already selected and filed with the town, one on Old San Carlos Boulevard, one in front of the Lani Kai, and the third in Villa Santini. The dates that they have already presented remain the same, February 1 through May 31 and November 1 through December 31. They would be off the Island the months of January, June, July, August, September and October. They would not be on during hurricane season.

Councilman Van Duzer said that he is in favor of Mr. Folke's recommendation for a 6-monthadministrative approval as the Chamber is requesting. In the spirit of cooperation he would like to see this return to 6 months per year with dates to be established by the sponsor and that all the rules apply to administrative approval, not special exception.

Councilman Rynearson agreed and added that he would like there to be no more than 2 welcome stations on Fort Myers Beach at any one time. There was discussion about approval being desirable in order to limit the number of welcome stations.

Town Manager Segal-George asked Mayor Hughes if these changes should be reflected for the November 3, 2003 public hearing, and he replied in the affirmative. Mayor Hughes closed the public hearing at this time and continued this item to November 3, 2003.

VII. COUNCIL MEMBER ITEMS AND REPORTS:

Councilman Van Duzer went to the Ruth Cooper awards luncheon recently and was pleased that one of the awards went to the Fort Myers Beach Pilot Club for their efforts in the walk on Lover's Key.

The Pilot Club also raised $3,200.00 which will be given to the Florida Lions Camp. He believes this is an example of cooperation between organizations.

He collected a little bit of monofilament last weekend plus part of a boat. He received a certificate for clean boating.

Vice Mayor Cain said the Pilot Club was very helpful during Monofilament Madness. There were people from Keep Lee County Beautiful, people on boats and kayaks, people from the Estero Bay Buffer Preserve staff, Mid-Island Beach Marina gave us a boat and they had an international crew, a family from Finland. Holiday Water Sports had two Hungarians, one Frenchman and some students with them. Fish Tale Marina and Mid Island Beach Marina received about 2,500 pounds of trash. Everyone had a good time. Bill Van Duzer and Mayor Hughes brought in parts of boats.

Everyone attended Lee County Legislative Day luncheon at the High Tech Center.

She thanked the Pilot Club and Ceel Sphuler for their help.

Councilman Thomas thanked the Pilot Club.

Mayor Hughes also thanked the Pilot Club and Vice Mayor Cain for the success of Monofilament Madness.

The School Board invited everyone to an Elected Officials Day.

Mayor Hughes and Town Manager Segal-George attended the Board of Directors Meeting at the Chamber where past and pending issues as well as methods of improving publicity of our efforts were discussed.

VIII. TOWN MANAGER'S ITEMS: None.

IX. TOWN ATTORNEY'S ITEMS: None.

X. PUBLIC COMMENT:

Tom Mansuco asked if the people abutting the canals absorb the whole cost of the dredging, not the preliminary work and was told by Ms. Segal-George that this is not clear right now. The Town will absorb the cost of the design and permitting, and more than likely the property owners will absorb the cost of the actual dredging. He also asked would the parking pass system be available to registered voters and was told that it is now. There is no intention to eliminate it; the question is whether to expand it. He then asked if it would not be advisable to wait for a complete year which would include a Season before making a decision on the parking issue.

Lenore James again addressed the Council on the matter of the overpass. She stated that as of last week they had obtained 23,000 signatures on petitions opposing the overpass from people all over the area. She said it was not just the small number of people who had been at the Cinnamon Cove meeting, but a much larger number.

Don Harris of Pescador came forward and said he had left earlier during the discussion of parking. He felt that the cutoff should be 5:00 P.M. so that people who are not seasonal could have access to parking at Times Square for viewing the sunsets without having to pay. He does not think anyone except voting members should have a pass for free parking.

XI. ADJOURNMENT:

The meeting was adjourned by Mayor Hughes at 8:08 P.M.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary