FORT MYERS BEACH
TOWN COUNCIL MEETING
NOVEMBER 3, 2003
Town Hall-Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER: The regular meeting of the Fort Myers Beach Town Council was called to order on Monday, November 3, 2003 at 6:30 P.M. by Mayor Dan Hughes.

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, Deputy Town Manager John Gucciardo, Administrative Services Director Rachel Lambert, Town Attorney Richard Roosa, Dan Folke, Community Development Director, Matt Feeney, Public Services Director.

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

III. INVOCATION BY REV. NADINE COTTON, NEW CHURCH OF SW FLORIDA

IV. PUBLIC COMMENT:

Donna **(Inaudible)** of 22772 **(Inaudible)** came forward to address the subject of parking fines. She had received a $32.00 parking ticket after patronizing an Island restaurant and feels that this will jeopardize area businesses. She lives here part time and Atlantic City, NJ full time and has never received such a fine in Atlantic City. Mayor Hughes advised that the matter of parking rates and fines will be on the Town Council agenda on November 17, 2003 and will be revisited at that time.

V. CONSENT AGENDA:

A. APPROVAL OF MINUTES OF OCTOBER 6, 2003 AND OCTOBER 20, 2003

MOTION: Councilman Van Duzer made a motion to approve Items A and B of the Consent Agenda. Vice Mayor Cain requested to withdraw Item C. Motion was seconded by Councilman Howard Rynearson.

VOTE: Motion was passed by unanimous vote.

B. PROCLAMATION – NOVEMBER, EPILEPSY AWARENESS MONTH

C. PRESENTATION OF CERTIFICATES OF APPRECIATION FOR MONOFILAMENT MADNESS

1. ISLAND WATER SPORTS

2. HOLIDAY WATER SPORTS

3. MID ISLAND BEACH MARINA

4. FISH TALE MARINA

Vice Mayor Cain had withdrawn this item in order to present the certificates. She gave a report on Monofilament Madness which she said was very successful. There were an estimated 100 people participated, and approximately 2,400 pounds of trash was collected. This was the 8th year, and these four businesses have consistently donated their time, staff and property to the event. Vice Mayor Cain expressed her gratitude and presented certificates signed by Mayor Hughes and the Director of Keep Lee County Beautiful, Rudy Bush. Representatives of the four businesses came forward to accept the certificates, and a photo was taken of the group with the Council members. Mayor Hughes also thanked the recipients for their efforts on the Town's behalf.

VI. ADMINISTRATIVE AGENDA:

A. SPECIAL EVENT UPDATE BY THE TIMES SQUARE BUSINESS ALLIANCE

Anita Cereceda came forward and referred to a special event permit which had been faxed to Staff and said that Mr. Tom Taylor of the Naples Art Association had been extremely helpful in organizing this event in association with the Fort Myers Beach Art Association and the Times Square Alliance. They have about 40 national and local artists participating to date and can accommodate approximately 66. Mr. Taylor was unable to attend this meeting to answer specific questions. This will be the first event to showcase the completed Old San Carlos streetscape project. They have approval by the Sheriff's Department and the Fire Department. There will be 24 hour security for the artists and their works. They will set up early Friday morning and will not tear down until Saturday evening. The request is to designate Old San Carlos Boulevard as an open container area for the duration of the festival, as with most other special events, and to allow on-street parking for the exhibitors and waive any parking requirements for that period.

Councilman Rynearson verified that Ms. Cereceda's request was for open container and parking for the 28th from 10:00 A.M. to 5:00 P.M. She replied that the event was from 10:00 A.M. to 5:00 P.M.; however, the artists will actually be arriving about 6:00 A.M. or the prior evening to set up. Councilman Rynearson asked whether there would be a problem with stopping the open container at 5:00 P.M. and Ms. Cereceda replied that this would not be a problem. After discussion it was determined that the request is to block any parking in front of the exhibits to prevent damage and not to block the entire street. Further discussion of the open container revealed that another hour after the event closes at 5:00 P.M. would be appropriate to give attendees a grace period.

Town Manager Segal-George asked whether the parking applies only to Old San Carlos, and Ms. Cereceda said yes. Ms. Segal-George asked about the parking in front of the exhibits and whether cones or horses would be needed. She asked whether the Alliance would take responsibility for keeping those spaces restricted to the exhibitors, and Ms. Cereceda said yes, this will be delegated to the security people.

Councilman Van Duzer asked about glass and was told that a general provision had been adopted to require plastic.

MOTION: Councilman Rynearson made a motion designate Old San Carlos Boulevard for open containers Friday, November 28th and Saturday, November 29th from 10:00 A.M. to 6:00 P.M. and to allow the use of off-street parking and waive the parking fees all day on November 28th and 29th. Motion was seconded by Councilman Thomas.

DISCUSSION: Councilman Rynearson asked if this was needed for Times Square. Ms. Cereceda said this had been discussed at their meeting but that no conclusion was made. She suggested that the open container designation be from the Top of the Mast end of the Square down Old San Carlos. Councilman Thomas was asked by Mayor Hughes if this was acceptable, and he agreed that the motion should be so amended.

VOTE: The motion was passed by unanimous vote.

B. DISCUSSION OF MOUND HOUSE PRESERVATION PLAN:

Mayor Hughes referred to a memo from Corbett Torrence and Theresa Schober. Ms. Schober said that the memo outlined the directorship priorities for the next year that were discussed at the CELCAB meeting in September. This fall the priorities are upgrading the electrical system, installing the kayak landing, working with Community Development Coordinator Dan Folke on a master concept plan for rezoning the property, and pursuing additional funding for restroom facilities, and producing marketing materials including a logo, brochure and newsletter. Many of these projects were funded by grants over the summer. These included $14,600.00 from the West Coast Inland Navigation District for the kayak facility; two small grants from Visit Florida and Florida Humanities Council to produce a brochure; and $5,000.00 from the Foulds Foundation towards the restroom project. CELCAB has decided to keep the Mound House closed during the renovation projects for liability reasons. They continue to run school programs because they are outdoor activities. She described a Descendants Day event on November 23rd. She pointed out that the Preservation Plan is critical and is the main topic of her presentation. She submitted a letter from Bob Sanford of Anchor Engineering that was presented in February when his firm was hired as consultant. She described what is necessary in the proposed Preservation Plan which has previously been acted upon by CELCAB. Such a plan could be helpful in obtaining major grants.

Mayor Hughes asked for a definition of "Preservation Plan." Ms. Schober replied that it is a historic preservation term or category and is similar to a master concept plan in a rezoning process. Issues are the integrity of the structure and materials in the structure with the intent to provide professional guidance in choosing a plan for restoration and rehabilitation.

Councilman Rynearson asked whether this will move us closer to a date, and Ms. Schober replied that it will identify dates of historical significance and give the option of restoring to that date. It focuses on the structure and what the structure allows, together with the historical significance of the property. Mr. Rynearson asked whether some of the work that has already been done could be utilized. Ms. Schober replied that it could.

Mayor Hughes asked the Council whether there were any questions on the five directorship priorities outlined in the memo. There were none. He then called for a motion on the Preservation Plan and asked Ms. Schober if there were a cost estimate. She said that approximately $20,000.00 is the estimate. $3,750.00 has already been contracted with Bob Sanford. Mayor Hughes verified with Deputy Town Manager John Gucciardo that this was included in the Mound House capital improvement budget.

MOTION: Councilman Van Duzer made the motion to go forward with selection of a professional service agreement to prepare a Preservation Plan for the Mound House. Motion was seconded by Vice Mayor Cain.

DISCUSSION: It was asked whether a dollar figure not to be exceeded should be specified, and it was pointed out that this must go out for bid and in the selection process the actual dollar amount will come before Council.

VOTE: The motion was passed by unanimous vote.

C. PRESENTATION BY PARASAIL INDUSTRY REPRESENTATIVE:

Mayor Hughes pointed out that there is a public hearing on this issue which he is not opening at this time. He referred to a memo from Director of Public Services Matt Feeney. Town Manager Segal-George gave background to the effect that Mr. Steinke had requested to come before Council and address the concerns of the parasailers on the Island following a meeting that had included everyone except Patrick Rinali. She had asked for an advance document in writing which was not available. Mr. Steinke then met with Ms. Segal-George and Mr. Feeney, and the referenced memo is the result of that meeting.

Mr. Feeney summarized his meeting with Mr. Steinke. The memo includes Mr. Steinke's suggestions regarding this ordinance. This included issues having to do with what is allowed within the 1,000 foot limit and the fine structure. Potential enforcement problems were also addressed.

Mayor Hughes requested clarification in view of the fact that the present ordinance already specifies the 1,000 foot limit and has been in effect for years. Ms. Segal-George explained that after two tickets had been issued, MRTF took up the matter. There have been two tickets written since the ordinance was enacted approximately seven years ago.

Councilman Rynearson was concerned about the issue of enforcement.

Councilman Van Duzer said he would prefer to continue action on this ordinance with the recommendation that Mr. Feeney and Mr. Steinke compile some facts to be submitted to MRTF and then come back before Council. He does not feel qualified to make a decision based on the available information. Mayor Hughes pointed out that a public hearing is required at this meeting, after which such a motion could be made.

D. FINAL PUBLIC HEARING ON ORDINANCE 03-09, PARASAILING:

Mayor Hughes opened the meeting for public hearing.

Bill Steinke came forward and thanked Council and Staff for receiving him. He became involved when he received a warning and had a difference of opinion with a Sheriff's Deputy how far he was supposed to be offshore with the chute open, after which he went to Town Hall and requested a copy of Ordinance 97-02 called the Parsailing Ordinance. He and others in the industry were not aware that Ordinance 97-02 no longer existed and was now included in the Land Use Code, and that the distance had been changed from 500 feet to 1,000 feet. After the tickets were issued and the fine structure came under discussion the industry became concerned. They are constantly concerned with safety. They do not object to regulations but are concerned that the regulations be fair and considerate of the operators, and be enforceable. With respect to penalties, the size and ambiguity were the issues of concern, and also that they be properly directed to include the captain, not just the business. He also addressed the time frame of the sliding scale for repeat offenses. He described parasailing procedures and operations in detail and the reasons for his recommendations as outlined in Mr. Feeney's memo. He said that he plans to actively participate in committee meetings in the future when parasailing is being addressed.

Vice Mayor Cain described the deliberations of MRTF in determining the proposed fine structures. She questioned the fact that the fines Mr. Steinke is proposing are lower than in the existing ordinance. Section 2757 provides for a fine of $150.00 for the first violation, $300.00 for the second and third violation, and the Town shall consider license revocation for more than three violations of this Chapter. Mr. Steinke stated that it was not considered unfair that the fines apply to both the captain and the owner, because they acknowledge that the business owner has to be responsible for the employee at all times, not just when a violation is observed.

Mayor Hughes asked Mr. Roosa whether, in the event this issue is continued in accordance with Councilman Van Duzer's suggestion, there would be another draft prepared for the Council to consider. There was discussion about the various versions of the draft ordinance. Ms. Segal-George pointed out that what is under discussion is Mr. Steinke's input, and could not arbitrarily be included in the ordinance. Mayor Hughes would prefer to have everything incorporated into one document. He said he was told that once a first reading of an ordinance has been held, it is not possible to change the wording of an ordinance during public hearings. He was told that this is not correct as long as Council stays within this section of the Code. Ms. Segal-George verified with Mr. Roosa that it would be possible to continue this issue for a month and come back with another re-write of this section without having to go through another introduction and first hearing. Mr. Roosa said this was appropriate. Ms. Segal-George then proposed that Staff will prepare a revision with direction from Council without having to return to MRTF. There was discussion about proper procedure between Mayor Hughes and Mr. Roosa. Mr. Steinke was excused at this time.

Richard Ramadan, owner of a parasail and jetski business on the Beach, came forward. He recalled that the ordinance had been amended from 2,000 feet when it was found that the Town had no jurisdiction beyond 1,000 feet, and he questioned whether the Town actually has

jurisdiction within air space. He also questioned whether leaving a sign out over night would constitute a violation for purposes of this ordinance. He said that his business was one of those who received a ticket and intends to challenge it.

Mayor Hughes replied that sign violations are not a provision of Section 2750 and would not be considered a violation under this ordinance. He disagreed with the premise about jurisdiction within air space but said that this would be a matter properly addressed in court.

MOTION: Councilman Van Duzer made a motion to continue discussion on this ordinance until February 2, 2004 at 6:30 P.M. and that Mr. Feeney be instructed to meet with representatives of the industry and prepare a presentation to submit to MRTF. Motion was seconded by Vice Mayor Terry Cain.

DISCUSSION: Mayor Hughes asked why Mr. Van Duzer feels this must be resubmitted to MRTF. Mr. Van Duzer replied that MRTF was involved previously, and he would like to have their expertise in order to come up with something that everyone can live with.

Councilman Bill Thomas noted that this came from MRTF and asked whether parasail industry representatives had attended the meetings and given input throughout. Vice Mayor Cain said that originally there were two industry representatives on MRTF, but one has been absent for some time. Mr. Van Duzer stated that this was discussed at a previous meeting and that industry representatives felt that they had not been informed of the meetings. Mr. Thomas pointed out that all meetings are properly advertised.

Councilman Howard Rynearson said he would like to have Town Attorney Roosa's opinion regarding enforceability before anything is adopted. There was some discussion about enforceability of ordinances in general. Mr. Van Duzer said he thought this was a part of the regular process.

Mayor Hughes said he has already commented on Subsection H and the exclusions to the 1,000 feet which he finds to be reasonable, including the fifth that Mr. Steinke suggested this evening. However, he feels that four violations in a 12-month period would be excessive.

Vice Mayor Cain also feels that four violations are excessive. She also discussed time frames for the violation period.

Mayor Hughes also addressed the multiple violations and the time period. There was discussion between Mayor Hughes and Mr. Roosa as to the procedure under which penalties would be enforced. Ms. Segal-George said that Staff would prepare a draft for submission to MRTF.

VOTE: Motion passed by unanimous vote.

E. FINAL 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 referred to a memo from Mr. Folke and requested his comments.

Mr. Folke cited changes since the last hearing which appear in Section B of 34-3051 on the first page of Exhibit A having to do with approval and length of permit.

Mayor Hughes asked Mr. Folke to elaborate on the fact that the welcome station must be ancillary to the principal use. Mr. Folke used examples of temporary uses such as Christmas tree sales. It is not a permanent use. Section 34-3048 speaks to ancillary uses. Several other sections were discussed for clarification of language.

Mayor Hughes then opened the meeting for the final public hearing on this ordinance.

Ms. Anita Cereceda came forward to say she disagreed with the policy. She had questions on several issues, such as promotion of membership sales versus businesses, promotion of off-Island businesses outside the Town, parking spaces and signage. She felt that LPA input was not given full consideration.

Mayor Hughes closed the public hearing at this time. There was discussion between Mayor Hughes and Mr. Folke about the issues raised by Ms. Cereceda, particularly parking spaces.

Councilman Van Duzer said he saw nothing wrong with the welcome stations. He felt they would be beneficial to visitors.

MOTION: Councilman Van Duzer made a motion to approve this item with the revision in 3451.1B to add a restriction that the required number of parking spaces must be maintained for the principal use, and change "Center" to "Station" wherever it appears, and with the provisions of six months and limit of two on the Island. Motion was seconded by Councilman Rynearson.

DISCUSSION: Vice Mayor Cain asked what kind of criteria there will be for selecting the two allowed. Mayor Hughes replied that he assumed this would be determined by the date filed. There was discussion about stacking the requests and how approvals would be handled administratively.

Councilman Thomas clarified the point that one does not have to be a member of the Chamber for information to be given.

Vice Mayor Cain asked for clarification whether there is any charge for this use. Mr. Folke replied that there is a fee for a temporary permit.

VOTE: Motion was approved by unanimous vote.

F. DISCUSSION OF TOWN HALL MEETING:

Mayor Hughes referenced a memo from Councilman Van Duzer. Mr. Van Duzer related to a meeting he attended in April 2003 after which he had made some suggestions concerning the negative comments he had heard. He believes there should be a better line of communication with the public on Fort Myers Beach. There were some newspaper articles which did not alleviate the situation. He envisions a place where people can come to openly discuss their issues and have them addressed. This open conversation with constituents is not common in this area, and he feels it would be a positive move to stop some of the negativity that is prevalent and also publicize some of the more positive accomplishments of the Town government. He has met with Carol Sharp, who has agreed to help with establishment of Town Hall Meetings. Mr. Van Duzer wanted to attempt to begin this month. He asked for Council's support and participation.

There was discussion about the procedural recommendations in the memo.

Councilman Thomas inquired of Mr. Roosa regarding the Sunshine Law and whether the Council members would be permitted to speak freely. Mr. Roosa replied that as long as the meeting is advertised they would be permitted to do so. Ms. Segal-George pointed out that the meeting will also be recorded and minutes taken.

Vice Mayor Cain said she has taken offense with some of the remarks she has heard. She has had eight hours of meetings this week and is constantly contacted throughout the Town. She feels there is sufficient communication without another meeting. She feels the general public is aware that there is more opportunity than three minutes during the Monday Council Meetings for the public to communicate with the members.

Mayor Hughes expressed the hope that this meeting would be an forum for the public to submit questions and get them answered, and not simply an opportunity to air complaints.

Councilman Rynearson requested that the time of the meeting be changed because he has a conflict. He would also like to see the Chairman open and close the meeting and retain control of the proceedings. He is in favor of having Town Meetings.

Councilman Thomas said he would be happy to attend a Town Meeting but observed that at Chamber meetings there are mostly empty chairs. He recalled that it had been decided to allow the public to speak at the beginning of Council meetings rather than at the end, to encourage more people to attend meetings. He feels that this is a very opportune time to express thoughts to the Council.

Councilman Van Duzer would take the Council's comments and requests back to the committee. He does not foresee any problems. The panel is a cross section of the community. Their next meeting is Wednesday morning.

VII. COUNCIL MEMBER ITEMS AND REPORTS:

Councilman Rynearson complimented Rachel Lambert on the makeup of the Council members' packets and thanked her. Several Council members concurred.

Councilman Van Duzer attended the play at Bowditch Point Saturday night and enjoyed it very much. He felt it was well worthwhile.

He will be attending Mosquito Control.

He asked Service Delivery Director Damon Grant to assemble figures on the parking meters and provide it prior to the November 17th meeting so there is ample time for review.

Vice Mayor Terry Cain and Councilman Rynearson attended the Total Maximum Daily Load Conference where they learned about TNDLs and freshwater inflows.

She also enjoyed the play at Bowditch Point.

On Halloween she attended a neighborhood happening that was well attended at a private home. She thanked those who were responsible for their efforts.

This weekend will be the sand sculpting event.

Mayor Hughes attended several Horizon Council meetings as the Town representative. One on the 24th was the annual general meeting, and on the 29th the Executive Committee retreat where he obtained some material which he will distribute later.

Regarding the parking meters, it is Mayor Hughes' understanding that the limitation of the passes will also be discussed. Ms. Segal-George said that this will be included.

VIII. TOWN MANAGER'S ITEMS: No items to report.

IX. TOWN ATTORNEY'S ITEMS: No items to report.

X. PUBLIC COMMENT:

Tom Mansuco came forward. He said the Town Hall Meetings have a potential for success because it will be presented before the entire Council. He feels it will be more satisfying to the public to address the entire Council rather than one at a time. He also complimented Ms. Lambert on the packet.

XI. ADJOURNMENT: Mayor Hughes adjourned the meeting at 8:48 P.M.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary