



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
SPECIAL MEETING MINUTES**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Friday, May 30, 2014

I. CALL TO ORDER

Meeting was called to order at 2:05 p.m. by Vice Chair Shamp; other members present:

Chuck Bodenhafer
Al Durrett
John Kakatsch
Jane Plummer – arrived at approximately 2:10 p.m.
Joanne Shamp
James Steele – excused.
Hank Zuba – excused.

LPA Attorney: Derek Rooney
Staff Present: Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. PUBLIC HEARING

A. Ordinance 14-XX-PAL-PWVL Regulations

Vice Chair Shamp opened the Public Hearing.

LPA Attorney Rooney noted the matter did not move forward at the May 5th Council meeting with the LPA recommended version and Council decided to adopt only the sections beginning with Section 5 of the LPA draft taking out issues regarding prohibited solicitations at other locations and allowing for locations possibly to be within 500' of another location, as well as, signs or flags within 12' of wet sand and that licensed PWVL businesses may also rent paddleboards, kayaks, and other non-motorized vehicles. He noted Council had received public comment on the issue; that Council wanted the amendments to come back for second review by the LPA; and that staff was now putting forward a second draft which included two options. He explained the primary difference between the two options and reviewed the other concern regarding co-location [separation between PWVLs or PALs].

Planning Coordinator Overmyer read into the record two comments received:

1. Sharon Faircloth – *“...under Section 27-49, we approve of Option #2 but we would like the license to be 500' instead of 250'; under Section 27-50(5) we approve Option #2; under Section 27-51(4)(b) we approve Option #2; however, at the end it needs to be clarified that if the PAL ever leaves then the PWVL has the right to provide parasail pick-ups will be restored. Also I think there should be same option for PAL vendors to move within 500' of a PWVL provided the PWVL doesn't already offer parasail pick-ups.”* Environmental Sciences Coordinator Laakkonen noted Ms. Faircloth had ownership/interest in three PWVL licenses and one parasail license.
2. Patrick Rinalli– *“...I have no understanding why we would be creating another precedent regarding the licenses. As always, it seems that it is to benefit an individual operation. We have continued to offer up all these exceptions and I am wondering if we'll keep changing things to meet individual needs. I have to respect the way the ordinances were written and I have some requests for my operations that I would like considered as well. I think these most recent possible changes need to be considered very carefully. Please feel free to pass this information along to the other constituents and I will look forward to seeing everyone in early June.”*

Public Comment opened.

Dean Kerkesner owner of Rebel Water Sports explained how after 20 years of operating his business on the Top 'O Mast property the property owner informed him that he could no longer operate his business on that site. He explained his belief that he had a legal right to relocate his business next door. He discussed his views on the 500' location restriction. He explained how the license cap came about; his experience with the former property owner where his business was located; and how he hired an attorney to assist him with finding a location to relocate to which was next door to the Top 'O Mast site. He added that he had negotiated a lease at the new site and was not aware of the relocation restrictions. He discussed his views on the two proposed options and indicated Option #2 would not allow him to ever do parasail pick-up. He told of the telephone calls and comments he received from other PWVL and PAL vendors concerning the proposed options. He asked if Option #2 was selected could there be a time limit (i.e. one year no PAL pick-up). He supported Option #1 in Section 27-51. He noted in the past he had two licenses and for industry safety he surrendered one license back to the Town. He requested the LPA support Option #1.

Bill Perry offered some historical information on the 500' rule/restriction and how the regulations for personal watercraft came about many years ago; and noted somehow over the years the 500' rule was carried over to parasailing. He reviewed how the restrictions were incorporated into the Town code when the Town was incorporated. He noted that parasailing involved a licensed captain who picked up people and then brought them out to the Gulf of Mexico; and how the 500' regulation should apply to only the personal watercraft rentals.

Eric O'Gilvey stated he had property that currently had PWVL and PAL licenses operating on-site and offered his comments on Section 27-49 as it referred to solicitation. He noted there could be potential issues with measuring from property line to property line. He suggested a definition for solicitation in the code. He discussed Section 27-51 and his belief that it should be PWVL 500'; and in Section 27-50 he found it difficult to tell a large hotel chain that they could not distribute flyers or tell an advertising firm that they could not advertise in hotel rooms or the lobby.

Bill Bronson, owner of Paradise Parasail, stated he did not have a problem with a business moving next door if they own a PWVL license and offered a different service. He stated he had a parasail license and that he did not solicit any type of wave-runner business. He noted there were safety concerns when it pertained to a like business within 500'. He expressed his view that like businesses such as parasailing should not be next to one another (less than 500') since it caused not only safety concerns but business concerns. He explained why he was in favor of Option #2 in Section 27-51.

Chris Schaub, business owner, reported the solicitation verbiage in the proposed amendment would impact his chair and umbrella business because he could no longer suggest to his customers where to go parasailing or jet skiing. He discussed his views on the 'difference' between like businesses (i.e. how they were operated, etc.) and the 500' separation on-shore.

Public Comment closed.

Environmental Sciences Coordinator Laakkonen noted that most of the proposed regulations were vetted with the industry about two years ago and staff had planned to bring these forward during this year. He added that Mr. Kerkesner had approached staff with his issue concerning raising the cap from 10 to 11 licenses. He noted then the issue regarding moving the license arose.

LPA Attorney Rooney reported Mr. Kerkesner had a temporary permit that would allow him to operate in his new location until all permits expired at the end of September.

Discussion was held regarding the proposed amendments to the PAL and PWVL regulations; impact of the proposed amendments to Rebel Water Sports; self-regulation by the industry, and the solicitation verbiage in the proposed amendment.

LPA Attorney Rooney explained the solicitation verbiage in the proposed amendment would not apply to Mr. Schaub's chair and umbrella business.

Vice Chair Shamp requested the LPA Attorney clarify if an issue might arise in the future, if the LPA was to attempt to get the vendors to work out the issues.

LPA Attorney Rooney explained when the temporary permit expired in September the issue would become twofold – there was no authority in the code to issue temporary permits and Mr. Kerkesner would then be in a non-conforming site which would open the Town and Mr. Kerkesner to liability. He noted if Mr. Kerkesner was in a non-conforming site when permits were renewed then would the permit be available for another vendor to pick-up. He pointed out that from today's meeting there was no uniformity between the vendors; and there would be two more public meetings where the vendors could pull together to arrive at something before the Council acted. He added the LPA had the ability to recommend any option to the Council.

Mr. Durrett recognized Mr. Perry in the audience.

Mr. Perry suggested that depending upon Environmental Sciences Coordinator Laakkonen's schedule that the vendors should get together again and work out their self-regulation. He told of his work on the creation of the industry regulations many years ago.

Mr. Bodenhafer asked if Environmental Sciences Coordinator Laakkonen had time to meet with the vendors.

Environmental Sciences Coordinator Laakkonen stated he would make time to meet with the vendors.

Discussion was held concerning the LPA and Council upcoming meeting schedules as it related to Ordinance 14-XX-PAL-PWVL Regulations.

Ms. Plummer expressed her belief that the LPA should not regulate how the industry advertised and conducted their business.

MOTION: Mr. Durrett moved that the LPA send back Ordinance 14-XX-PAL-PWVL to the industry for an industry solution to the LPA in August; second by Mr. Bodenhafer.

Vice Chair Shamp suggested that "dissemination of brochures" should be clearly defined; noted concern regarding "8 rentals per location" or a total of 88 jet skis; and suggested consideration for limiting the number of paddleboards and kayaks.

Discussion ensued regarding the paddleboards and kayaks.

Vice Chair Shamp continued noting her concerns regarding the booths mentioned in Section 27-51(3)(d) "...12' of the wet sand".

Discussion was held concerning Vice Chair Shamp's concern regarding the location of the booths.

Vice Chair Shamp recommended the booths mentioned in Section 27-51(3)(d) be located "...20' or 25' of the wet sand".

Ms. Plummer noted her concern that the flags and the equipment were the bigger issue with being left in the space where people walked in the water. She mentioned the industry should look at Page 2, Option #2(f).

VOTE: Motion approved; 5-0 (Chair Zuba and Mr. Steele were excused).

Public Comment reopened.

Chris Schaub, business owner, discussed 'gas boxes' and recommended they be painted a color that would be noticeable by the public and that the public knows there was fuel in the box.

Bill Perry addressed storage of equipment on the beach and noted he too had an issue with it being too close on the beach. He reviewed how he operated his business in the past regarding the location/placement of equipment, the booth, and chairs.

Discussion was held concerning chair rentals and people utilizing their personal chairs.

Dean Kerkesner commented that another industry workshop was a good idea.

Eric O'Gilvey noted that as part of the inspection, the gas boxes were required to have a 'flammable' sticker on the box. He agreed that the furniture and equipment should be moved back further.

Mr. Bodenhafer questioned why were stickers used on the gas boxes which fall off and suggested 'flammable' be painted on the box.

Mr. Durrett suggested to the industry that the next time they come before the LPA that they do not have "a" or "b" rather just "a" and to keep it simple.

Vice Chair Shamp closed the Public Hearing.

V. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

VI. ADJOURNMENT

MOTION: Motion by Mr. Bodenhafer, seconded by Ms. Plummer to adjourn.

VOTE: Motion approved; 5-0 (Chair Zuba and Mr. Steele were excused).

Meeting adjourned at 3:22 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

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DRAFT