

1. Requested Motion:

Meeting Date: 10/04/10

Move that Section 27-55 of the Land Development Code be interpreted as allowing (or disallowing) the transfer of an existing PAL license from 1130 Estero Boulevard to a new location and directing that clarifying language be drafted and presented to the Town Council as an amendment to Section 27-55 of the Land Development Code.

Why the action is necessary:

The current provisions of Section 27-55 of the Land Development Code relating to the transferability of PAL licenses are not clear.

What the action accomplishes:

Clarifies Town Council's intent with respect to the transferability of existing PAL licenses.

2. Agenda:

3. Requirement/Purpose:

4. Submitter of Information:

Consent
 Administrative

Resolution
 Ordinance
 Other

Council
 Town Staff
 Town Attorney

5. Background:

See attached memorandum

6. Alternative Action:

N/A

7. Management Recommendations:

8. Recommended Approval:

| Town Manager | Town Attorney | Finance Director | Public Works Director | Community Development Director | Cultural Resources Director | Town Clerk |
|---|---------------|------------------|-----------------------|--------------------------------|-----------------------------|------------|
|  | | | | | | |

9. Council Action:

Approved Denied Deferred Other

TO: Mayor and Town Council

FROM: Marilyn W. Miller, Town Attorney

DATE: September 23, 2010

RE: Interpretation of Section 27-55 of the Land Development Code (relating to transferability of PAL licenses)

The Town has received a request to transfer an existing parasail (PAL) license currently located at 1130 Estero Boulevard to a new location. In reviewing the relevant Land Development Code provisions, it is unclear whether such a transfer is permissible. The Town's Land Development Code contains a procedure for interpreting the Code in such situations. The relevant provisions state as follows:

Sec. 34-90. Land development code interpretations.

The town council may hear and decide applications for interpretations of this code as provided in § 34-265. Such applications shall not require a public hearing or recommendation from the local planning agency. Applications for such interpretations must be accompanied by the submittals described in § 34-202(a)(4)-(9); the director may waive any submittals that are not applicable to the type of interpretation being requested.

Sec. 34-265. Requests for interpretation of this code.

Where a question arises as to the meaning or intent of a section or subsection of this code, a written request stating the area of concern and the explicit interpretation requested shall be submitted on forms provided by the director.

(1) The director may render decisions of an administrative nature, such as but not limited to:

- a. Proper zoning classification for a use not specifically addressed; and
- b. Procedures to follow in unusual circumstances.

(2) Interpretations which, in the opinion of the director, involve policy or legislative intent issues shall be placed on the agenda of the town council for its consideration (see § 34-90)

The interpretation sought in this instance involves policy and/or legislative intent and must, according to the above-cited provisions, be decided by the Town Council.

ISSUE: What was the Town Council’s legislative intent with respect to the limitations on transferability of an existing PAL license to another location pursuant to Sec. 27-55 of the Land Development Code?

FACTUAL BACKGROUND

In late August of this year, the Town Manager received the attached correspondence from attorney Beverly Grady on behalf of her client, Paradise Parasail, Inc. (hereinafter “Paradise”). Paradise currently has two parasail licenses for two separate locations: 1130 and 1028 Estero Boulevard. Those two licenses have been in existence since before the time the parasailing regulations were adopted in January 21, 1997. The license for 1130 Estero Boulevard has been owned by Paradise since before 1997; the license for 1028 Estero Boulevard was originally owned by another entity and was transferred to Paradise in 1999.

As you may know, the 1130 Estero Boulevard location is the Seafarer’s property that was recently purchased by Lee County. Paradise has a valid and binding lease for its parasail business at that location, but Lee County has made it clear that they do not want to continue with the lease at that location. There are approximately three (3) years remaining on the current lease and there is also an option to renew for an additional five (5) years. Lee County has taken title to the property and there is an issue about the validity of the lease because the lease was not recorded and the property was subsequently foreclosed by Fifth Third Bank. It is unclear from the Court records whether the existing lease was extinguished by the foreclosure action. Paradise is willing to transfer the license for 1130 Estero Boulevard to another location, but it is unclear whether such a transfer is permissible under the current wording of the parasail regulations.

When the parasail regulations were first adopted in 1997, the following PAL operators were legally in existence:

- Rebel Watersports
- Aquasports Unlimited
- Wind and Water sport (two locations)
- Paradise Parasail (1130 Estero Boulevard location)
- Sun and Fun Air & Water Sports
- Patrick Renalli

During the public hearing held on January 21, 1997, the minutes reflect that the foregoing seven (7) licenses were acknowledged by the then Town Manager Marsha Segal-George. The minutes quote Ms. Segal-George as stating that “There are 6 PAL licenses and one “grandfathered” license (Pat Ranalli) and they are the only ones who could pick up at any location.” In Ordinance 97-2, however, it states, in Section 28-50.B.7.:

The Town Manager may issue no more than (6) PAL licenses outstanding at any point of time. PAL’s shall be issued on an annual basis coinciding with the Town’s fiscal year, October 1 through September.

At the time that ordinance was passed, there were a total of seven (7) parasail business locations operating and those same businesses have continued to operate and have been renewed from year to year despite the foregoing provision which seems to indicate that only six (6) licenses can be outstanding at any one time. One interpretation, therefore, is that the “grandfathered” license referred to in the minutes from the adoption hearing was considered to be separate and apart from the other six (6) licenses and is not to be considered as one of the six (6) licenses referred to in Section 28-50.B.7. of the ordinance. The 1996 draft ordinance lends support to that interpretation as it specifically lists Mr Ranelli in the grandfather provision due to written agreements.

The original ordinance provision concerning transferability of PAL licenses read as follows:

28-54 TRANSFERABILITY OF PAL: GRANDFATHER CLAUSE

A. The PAL is transferable provided that the number of outstanding PAL’s issued by the Town is less than six (6) and:

1. The location of the business complies with the minimum separation requirements of this Ordinance, or is a “grandfathered in” accordance under (sic) subsection B below; and
2. The new business owner files an amended application with the Town providing the information required in this Ordinance.

B. Parasail operators that have established or commenced business at their existing locations on or before the effective date of this Ordinance, and which are in conformity with the location requirements of the Fort Myers Beach Land Use Code, but may or may not comply with the location requirements set forth in this Ordinance, may continue to operate as a nonconforming use after the effective date of this Ordinance, unless terminated for failure to obtain the PAL as required by this Ordinance, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PAL permit.

The foregoing section was repealed by Ordinance 01-05 and regulations concerning transferability were added to existing Section 27-55 as follows:

Sec. 27-55. Transferability of PWVL and PAL licenses; grandfather clause [incorporates § 28-54]

(a) Transferability. Provided that this chapter Ordinance has been complied with, the PWVL or PAL is transferable if:

- (1) The location of the business complies with the minimum separation requirements of this chapter ordinance, or is a “grandfathered in” accordance under subsection (b) below; and
- (2) The new business owner files an amended application with the town providing the information required in this chapter Ordinance; and
- (3) Transferability of PALs to new conforming locations may only be allowed when licenses fall below 6. If there are 6 or fewer PALs issued, then a license at a nonconforming location can move that license to a conforming location and

surrender the nonconforming location which still results in 6 or fewer total licenses. For PAL transfers only, the number of outstanding PALs issues by the town must be less than six. [moved from § 28-54]

. . . .

(c) Nonconforming PALs. (b) Parasail operators that have established or commenced business at their existing locations on or before January 21, 1997, the effective date of this Ordinance, and which are in conformity with the location requirements of the Fort Myers Beach land use this code, but which may or may not comply with the location requirements set forth in this chapter Ordinance, may continue to operate as a nonconforming use after January 21, 1997, the effective date of this Ordinance, unless terminated for failure to obtain the PAL as required by this chapter, Ordinance, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PAL permit. [moved here from § 28-54]

The first and second sentence in Section 27-55(3) appear to contradict one another. The first sentence indicates that PAL licenses are only transferable if there are *five* (5) or fewer licenses (i.e. less than six). The very next sentence, however, indicates that a license *can* be transferred if there are *six (6) or fewer* licenses. To further complicate matters, it appears that in practice, the Town has, over the past several years, allowed several of the existing businesses to transfer their PAL licenses to different locations despite the fact that there have always been a total of seven (7) licenses in existence.

The wording in Section 27-55(c) concerning “nonconforming” PALs is likewise ambiguous. If the established businesses conformed to the location requirements on the date the ordinance was adopted in 1997, then arguably they are *conforming*, not *nonconforming*. Normally a “nonconforming” use or location is defined as a use or location that conformed to all legal requirements at the time the use or location originated, but no longer conforms to all requirements due to a change in regulations. It is unclear from the records I have reviewed, but perhaps the “grandfathered” business was the only truly “nonconforming” business at the time the regulations were adopted in 1997. That would make sense, since the terms “grandfather” and “nonconforming” are terms that typically have the same meaning.

Another section that is relevant to the issue is Section 27-53(d), which states:

27-52 (d) Cap on number of licenses. PWVLs and PALs shall be issued on an annual basis coinciding with the town’s fiscal year, October 1 through September 30.

- (1) The town manager may issue no more than 10 PWVL licenses outstanding at any point of time.
- (2) The town manager may issue no more than 6 PAL licenses outstanding at any point of time.
- (3) See § 27-55 for regulations on transfers of existing PWVLs and PALs.

Since the six (6) original PAL licenses, plus the Renalli “grandfathered” license have all apparently been in effect continuously for the past thirteen (13) years, an argument can be made that the six (6) licenses referred to in this section, and perhaps in the other LDC sections as well, do not include the Renalli “grandfathered” license. But, as stated above, the Town has for the past thirteen years, routinely renewed all seven of the existing licenses on an annual basis.

I have reviewed the minutes of both the 1997 and 2001 Town Council meetings when the ordinance was first adopted and then amended to try to discern the legislative intent, but have found nothing other than Marsha Segal-George’s comments from the adoption of the original ordinance in 1997. As stated above, her only comment at that meeting was to state that there were six (6) PAL licenses and one (1) “grandfathered” license and that they are the only ones who could pick up at any location. It appears that the restrictions on location transfers may have been adopted to ensure that no more than seven (7) businesses would be permitted. Another possibility, however, is that the regulations were adopted to further limit the number of parasail business locations by only allowing a location transfer when the number of licenses falls below a certain number.

The Town Council must decide what it believes the previous Council’s legislative intent was when Section 27-55 of the Land Development Code was adopted and subsequently amended. Council’s options are: (1) determine that it was the prior Council’s intent to allow any of the six (6) parasail business licenses that were in existence in 1997 (i.e. excluding the “grandfathered” location) to transfer to a new location; (2) determine that it was the prior Council’s intent to only allow an existing business to transfer its license to a new location if there are less than six (6) licenses outstanding at the time the transfer is sought (i.e. five (5) or fewer outstanding licenses); or (3) determine that it was the prior Council’s intent to allow any of the seven (7) parasail businesses that were in existence at the time the regulations were adopted to transfer their license to a new location. Once Council decides how this section should be interpreted, it is my recommendation that section 27-55 be amended to clarify the language so that it accurately reflects the legislative intent and hopefully removes the ambiguities.

If you have any questions concerning the foregoing, please do not hesitate to contact me.

Attachment



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August 27, 2010

Mr. Terry Stewart
Town Manager
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Re: Transfer of PAL's Pursuant to Chapter 27

Dear Mr. Stewart:

This correspondence is prepared on behalf of Paradise Parasail, Inc., who currently has PAL's for 1130 Estero Boulevard and 1028 Estero Boulevard. We want to extend our appreciation and thanks to you and your staff for the assistance provided in research of minutes and historical information to the extent that it could be obtained. In this correspondence we wanted to discuss the ability and right for location transfers of the 6 PAL's that were issued pursuant to the original ordinance, Ordinance 97-2 and later incorporated into the Land Development Code Chapter 27.

The Town since adoption of its regulations on parasailing has permitted transfers of PALs to a different geographical locations.

It is established by the records of the Town Council and the official minutes of the Town Council that at the time of adoption of the parasailing regulations on January 21, 1997, the Town recognized 6 PAL vendors and one grandfathered vendor location. The records also established that the Town has consistently authorized and approved location transfers of the 6 PAL locations.

The "grandfathered location" is referenced as a PAL license today which makes it appear that there are 7 PALs. This has caused confusion in reviewing the section on the transfer of PALs that states that there needs to be 6 or fewer PAL's to permit a transfer. We would respectfully submit it was the Town's understanding when one reviews the adoption process of this parasail ordinance and the draft ordinances and the minutes of the Town Council that the Town recognized 6 lawful PALs and a grandfathered situation that could remain. It was clearly understood that the 6 lawful PALs could continue to transfer their locations and have, in fact, received Town approval of transfers to new locations.

The purpose of this correspondence is to obtain confirmation from the Town that PAL for location at 1130 Estero Boulevard which is one of the 6 original PALs issued in 1997 at the time of the adoption of the Ordinance may be transferred.

Mr. Terry Stewart
August 27, 2010
Page 2

In support of this position, we would like to provide some background documentation which includes the following:

- correspondence from John Gucciardo who was Assistant to the Town Manager from 1996-2005. He was personally involved in the preparation of the 1996-97 parasailing ordinance and the annual issuance of PAL permits through 2005. His correspondence supports the interpretation that the 6 lawful PAL vendors were intended to and have in fact transferred locations consistent with the ordinance.
- The minutes of the October 7, 1996 Town Council Meeting reviewing a draft of the parasailing ordinance and a copy of the draft ordinance dated 10/2/96; and
- January 21, 1997 minutes regarding the adoption of the parasailing ordinance.

The draft ordinance considered on October 7, 1996 recognizes that the parasail licenses are capped at 6, but added Section 16g to specifically recognize an additional grandfather situation with the following language.

“However a grandfather Lee County Parasail license holder is currently operating within the Town through written agreements. The Ranalli Parasail Inc. license will be allowed to operate pursuant to this section and will be allowed a Fort Myers Beach Parasail PWV1 license. The rights to this license (Ranilli Parasail Inc.) will continue as long as the license holder complies with the requirements and conditions of this ordinance.”

At the October 7, 1996 meeting the Town Attorney recommended that the “actual name” of the grandfathered operator in Section 16g be deleted from the ordinance so would not appear that the Town was granting a franchise to the grandfathered operator but the grandfather section was included to protect this operation.

At the January 21, 1997 adoption hearing, the following PAL operators attended and spoke:

Dean Kirkestner (Rebel Watersports)

Bill Perry (Aquasports Unlimited)

Ted Primich (Wind and Water sport) – 3040 and 1400 Estero Boulevard

Rick Smith (Paradise Parasail)– 1130 Estero Boulevard

Lonnie Clark (Sun and Fun Air & Water Sports)

Patrick Renalli

Mr. Terry Stewart
August 27, 2010
Page 3

Note on Page 5 of the 1/21/97 Town Council minutes, when the public hearing was closed on the parasailing ordinance, the Town Manager stated "this ordinance has been worked on since the summer, has had a lot of input from the vendors, and has passed the LPA. There are **6 PAL licenses and one grandfathered license (Pat Ranalli)** and they are the only ones who could pick up at any location." In other words, the Town Council adopted a regulation permitting 7 locations and 7 vendors, 6 of which were to be issued the PAL license and one of which was to be recognized as a grandfathered operator.

This ordinance as adopted was supported by the parasailing industry because there was no question that each of the 6 PAL licensed operators were considered lawful and able to transfer to locations. In addition, Mr. Renalli was protected as he could continue to operate at his location based on the grandfather language.

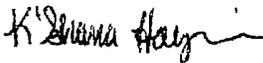
Based upon Paradise's research it understands that three of the current 6 locations for PALs today were original locations at the time of the adoption of the ordinance: 1400 Estero Boulevard, 3040 Estero Boulevard and 1130 Estero Boulevard. Location of original PALS do not appear to be available in the Town's records but based upon Paradise's knowledge and interviews with former operators, it is clear that transfers have occurred to current locations. For example, Paradise has been informed that PAL were issued to 6890 Estero Boulevard and on I Street but later the Town approved geographic location transfers. Locations that currently have PALs issued were not the original locations in 1997. Since the time of the adoption hearing the 6 PAL licenses have been permitted to transfer to new locations and permitted to transfer to new owners. The August 20, 2010 letter from John Gucciardo establishes how the Town interpreted and applied Chapter 27. We are confirming consistency of that interpretation.

We are requesting confirmation that the PAL owned by Paradise at 1130 Estero Boulevard and PAL located at 1028 Estero Boulevard are each individually entitled to be transferred under Chapter 27 as they were each one of the original authorized 6 PAL licenses. This request is consistent with the ordinance and the interpretation applied by the Town to Chapter 27.

Thank you for your attention to this matter.

Very truly yours,

ROETZEL & ANDRESS, LPA


for Beverly Grady

BG/umr
Enclosures

JOHN GUCCIARDO
177 Dundee Road
Fort Myers Beach, FL 33931

August 20, 2010

Mr. Terry Stewart
Town Manager
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Re: Parasailing Regulations

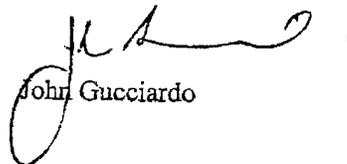
Dear Mr. Stewart: *Terry,*

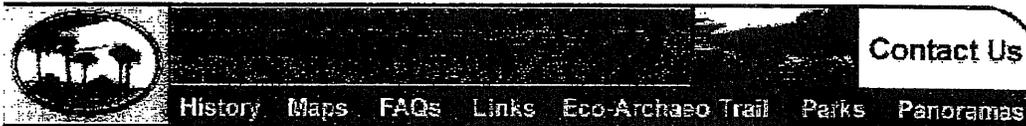
I was an employee of the Town of Fort Myers Beach from 1996 until 2005. As part of my duties I was familiar with and worked on the parasailing and personal watercraft regulations in the summer of 1996 through adoption of Ordinance 97-02 in January 21, 1997. I personally, and in conjunction with the Town Manager, Marsha Segal George worked with the jet skis and parasail operators on Fort Myers Beach in the crafting of the parasail and personal watercraft regulations. In addition, I was familiar with the Town's review and approval of transfers of certain PAL (parasailing licenses) within the Town through 2005. I was familiar with Chapter 27 of the Land Development Code through 2005.

In 1996 there were 6 parasail operators and a grandfathered location with Mr. Patrick Renalli. The intent of the ordinance was to recognize and cap the existing parasail operators licenses at 6 and, in addition, recognize there was a grandfathered operation with Mr. Renalli. It was the intent of the Town Council, through its regulations, to permit the 6 PAL holders of licenses to transfer licenses to different locations and to sell their licenses. It was never the intent of Town Council to preclude the transfer of one of the 6 PAL licenses until one of the 7 operations went out of business. The understanding of the 6 PAL license holders was that there was no impediment to transfer or sale of any of the 6 PAL's. In fact, during my tenure with the Town of Fort Myers Beach transfers of several of the 6 lawful PALs were permitted in compliance with the parasailing ordinance which is now Chapter 27 of the Land Development Code.

I hope this provides assistance in providing some history and meaning of Chapter 27.

Very truly yours,


John Gucciardo



Council Minutes : January 21, 1997

FORT MYERS BEACH
 TOWN COUNCIL MEETING
 JANUARY 21, 1997
 Nations Bank, Council Chambers
 2523 Estero Boulevard
 FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Tuesday, January 21, 1997, at 6:30 P.M. by Anita T. Cereceda, Mayor.

Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

Excused from the meeting: Vice-Mayor and Council Member Ted FitzSimons

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by the Reverend Dr. Ronald P. Salfen, Pastor of Chapel By The Sea Presbyterian Church.

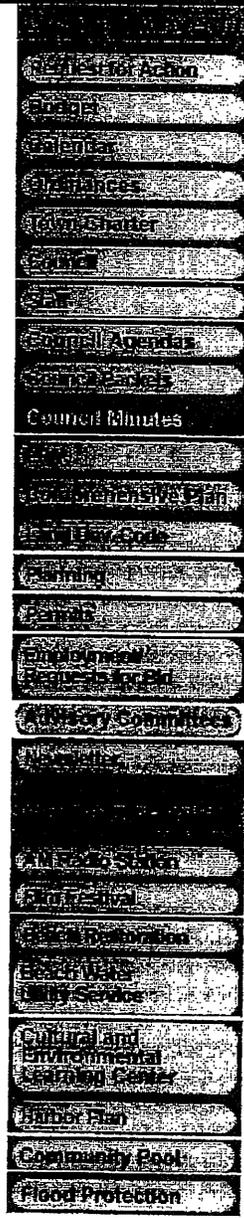
IV PROCLAMATION ON CANCERTHON

Ray Murphy read a proclamation thanking Continental Cablevision and the American Cancer Society for their many years of work on the Cancerthon which will be held for the last time on January 25. Edward Garcia, Community Relations manager of Continental Cablevision, accepted the proclamation.

V PUBLIC COMMENTS AND INQUIRIES

There were no public comments.

VI APPROVAL OF MINUTES: JANUARY 6, 1997



on policies. The Council also needs to appoint a charter review committee. She proposed that each Council member nominate a person to sit on the board, but if the Council prefers, they could nominate a slate and the top five vote-getters will be on the committee. The committee will hold open meetings per the sunshine law. The Chamber has already conducted a review and the council's review committee will make use of their review.

She also said that there has been a meeting with the Sheriff who is short **\$50,000 for covering the Town for Spring Break and he would like the Town** to allocate the money. She said that she went back to the minutes of an **earlier meeting where she specifically asked the Sheriff about core services** and was assured that we would receive the same services as in the past. The Council agreed that the Sheriff could be counted on to do the right thing for the Town.

IX PUBLIC HEARING ON AMENDMENT TO VESSEL CONTROL AND WATER SAFETY ORDINANCE

Mayor Cereceda read the titles and opened the public hearing.

A BILL VAN DUZER

Mr. Van Duzer, a resident since 1956, has owned a boat since 1959. He has **visited all areas of the back bay while fishing and believes it should be** protected, but he takes exception to the 1000' slow speed zone because it will take 1 to 1 ½ hours from his canal to his favorite fishing hole. He does not feel that he endangers the grass flats or the animal life.

B LUCINDA KELLER

Ms. Keller is concerned about enforcement: **who will enforce and how will it be paid for?** Marsha Segal-George said she will be meeting with law enforcement bodies to discuss this.

C JIM FIGUERADO

Mr. Figuerado, owner of Mid Island Marina, is opposed to the amendment because he has just fixed up his marina and it would hit him financially because **no one will want to store their boat there if it will take them three** hours to get to the Gulf. Mr. Ister pointed out that the channels have been **excluded from this ordinance.**

D JOHANNA CAMPBELL

Ms. Campbell spoke for the animals. 1000' feet is not that far because the **channel is excluded and she knows that not all fishermen are as considerate** as the previous speakers. Rookeries have been destroyed and manatees **injured by excessive speed.**

E RAY MERTENS

Mr. Mertens questioned whether we are over legislating and possibly overstepping the boundaries for San Carlos Island and other jurisdictions. **500', if it is enforced properly and fined seriously, will be good enough. If we try enforcement first and that still doesn't work, the Council can go back later and increase it to 1000'. He would rather see enforcement than change.**

The public meeting was closed.

Mr. Reynolds suggested dropping any reference to "beach" since the ordinance addresses the back bay. He also suggested it should say "not less than 100 feet of the pier." Mayor Cereceda said she would like to see the effective date be changed to a time when it can be enforced. She also suggested leaving the zone at 500' but adding a 500' zone around any beach which would protect all the rookeries and leave the rest of it open. Marsha Segal-George feared that would be even harder to enforce.

Motion: Mr. Isler moved and Mayor Cereceda seconded that the amendment ordinance be dropped. After discussion, the vote was as follows: Mr. Isler - yes; Mr. Reynolds - no; Mr. Murphy - yes, Mayor Cereceda - yes. The motion passed.

Discussion: Mr. Reynolds would rather have it continued until the next meeting rather than dropped.

The Council took a break at 8:00 PM and reconvened at 8:15 PM.

IX PUBLIC HEARING ON PARASAILING ORDINANCE

Mayor Cereceda read the titles and opened the public hearing.

A AL VAN HORN

Mr. Van Horn urged support because the beach needs reasonable measures of control.

B DEAN KIRKESTNER

Mr. Kirkestner, of Rebel Watersports, expressed concern about the requirement for Florida stickers because he is federally registered and is not required to have them. He felt that the rule about 500' from the pier was unnecessary and that people want to take pictures of the pier. He is having a problem with private boats anchoring within the buoy lanes for jet skis. If the ordinance can't be enforced, don't pass it.

C BILL PERRY

Mr. Perry, of Aquasports Unlimited, said that perhaps parasail operators should only be able to operate out of the PAL sites (only 6 locations on the island) rather than out of PWVL locations.

D RON JOHNSON

Mr. Johnson said that there are 21 PWVLs, and therefore this ordinance would allow 21 locations for parasail. That number needs to be restricted for safety. He said it is unfair that he has to operate 1000' out even though he has a master's license, when an individual can run his boat within 500'.

E TED PRIMICH

Mr. Primich of Wind and Water Sports at Lani Kai said that locations without parasail licenses don't have to pay such high insurance and they don't have to buy the expensive boats that are necessary for parasailing, yet the PWVL operators are gaining from parasail vendors without paying for it. He has

Mayor Cereceda read the titles and opened the public hearing. There being no public comment, the hearing was closed.

Motion: Mr. Reynolds moved and Mr. Murphy seconded that the ordinance be passed as written. The vote was as follows: Mr. Murphy - yes; Mr. Isler - yes; Mr. Reynolds - yes; Mayor Cereceda - yes. The motion passed unanimously.

XII RESOLUTION ON NATIONS BANK LOAN

Mr. Roosa said that this resolution authorizes the issuance of a \$500,000 loan at 4 ½ % adjustable interest.

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

Discussion: Mr. Reynolds said that he does not see why the Town needs to keep getting loans for money they don't need.

XIII RE-APPOINTMENT OF LPA MEMBERS

Marsha Segal-George said that according to the ordinance, there are two LPA members with one-years terms (Mr. Van Duzer and Mr. Mulholland.) At the time, the Council stated that they wanted them to stay on until the task was finished, so they need to be reappointed.

Motion: Mayor Cereceda moved and Mr. Reynolds seconded that Mr. Van Duzer and Mr. Mulholland be reappointed to the LPA. The motion passed unanimously.

XIV AGREEMENT WITH LEE TRAN ON TROLLEYS

Mayor Cereceda asked what happened to the free trolley and Mr. Gucciardo answered that the staff was relying on the recommendation of Lee Tran that there would be a potential for abuse, mostly with kids jumping on and off. Lee Tran says that the ridership is not affected that much by the 25-cent fare. Mayor Cereceda feels that the trolley should be free as an incentive to solve the traffic problems. She also asked if the fare box is greater than 20%, would the Town get a refund? Mr. Gucciardo answered that we would not. He also explained that this is a short-term approach for this season only.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the agreement be accepted. After discussion, the motion passed unanimously.

Discussion: Mr. Isler stated that this is 10% of our transportation budget which should be used for roads. He is afraid that it will set a precedent and we will have to pay for it every year. He is disappointed that all responsibility for peaking is falling on the town, and the County is not even giving us the gas tax we are due. Yet he realizes that we have a problem and if we don't do it this year, no one will. Marsha Segal-George stated that TDC's consultant says that our traffic problems are caused by seasonal residents rather than tourists and therefore TDC can't pay for it. The Town does not have the studies to prove that it is not true. Mayor Cereceda asked if they could take out the part about advertising monies going to the County. Mr. Gucciardo felt that it was too late to change this year but it could be worked on for next year.

XV REQUEST FOR MONEY FOR INTERPRETIVE SIGNAGE ON

MOUND KEY

Larry Fooks, park manager of Mound Key State Archaeological Site, stated that Mound Key is only 2200 yards from Fort Myers Beach . He showed copies of interpretative panels that they would like to place along the trail so that visitors can understand the site better. They will cost about \$2000 and he needs the support of the Council in the amount of \$700. This project will be in partnership with the Boy Scouts, the Koreshan Unity Alliance, the DEP, and hopefully private enterprises. Marsha Segal-George noted that Mound Key is going to be an important part of the Eco-Archeo Trail to tie in with the Mound House. The money would come out of the Community Services budget.

Motion: Mayor Cereceda moved and Mr. Reynolds seconded that the donation be approved. The motion passed unanimously.

XVI TOWN MANAGER'S ITEMS AND REPORTS

A FUTURE WORKSHOPS

John Gucciardo said that a CRA workshop has been scheduled on January 29 (Wednesday) to coordinate with CRA, construction and other entities to make a plan for turnover to the Town (some time in February.) February 13 (morning) has been set as a workshop with Sanibel on beach issues, and will take the place of the regular evening meeting on that date. He proposed February 27 as the workshop on budget and finance and the result of the audit. Mayor Cereceda suggested that at each workshop there should be time set aside for policies and procedures in addition to a special workshop. Mr. Isler suggested a workshop on March 27 to go over the computer (Word, Excel, Office 97, etc.), e-mail, internet, etc. Mr. Roosa mentioned that Steve Carter of the News Press had offered to give a workshop on government in sunshine, ideally in conjunction with the LPA and the Charter Review Committee. That will be set for March 13 along with policies and procedures. Mayor Cereceda suggested that at the next meeting on February 3 the council be prepared to name people to the Charter Review Committee. It was decided that each Council member would be able to appoint one member.

XVII TOWN ATTORNEY'S ITEMS

Mr. Roosa reported that the attorney for Sunstream has asked for some comfort on the expiration of their permits while they are in negotiations with Mariner on the possible land swap. Sunstream submitted a proposed motion. If the Council wants to consider adopting the motion, Mr. Roosa suggested changing the last two lines to "90 days after the notice to proceed from the Town Council". That would give the Council more control over how long the negotiations could proceed. As of now, their permits will expire 90 days after the mandate from the Second District Court of Appeal has been handed down, which could be any day because the opinion has already been handed down and there has been no appeal filed. Mr. Roosa noted that this is the first time that the Council has anything in writing on the proposed swap. Mr. Reynolds suggested since this is the first time that the Council has seen this, that it be tabled until the next meeting because he would like more time to think about it. Mayor Cereceda moved and Mr. Reynolds seconded that this request be denied, but Mr. Roosa said that a motion is not necessary if they are not going to act on it. Mayor Cereceda stated that she was afraid this would give Sunstream all the time they want

to drag their feet. She thought that refusing this would make them move faster to come up with a proposal and then the Council can consider the request once they get a proposal. Marsha Segal-George stated that her fear was that if the Council did not give Sunstream some assurances, they would have to start driving pilings for the hotel before the possibility of a land swap was fully explored. She said the land use process is so lengthy that it could take a year for completion of all the steps. Mr. Gucciardo said everyone understands the need to get the thing defined so the residents and Council can make an evaluation, but Sunstream's concern is that unless they have some protection of their permits they could get caught in the County's public hearing process and it might not even get to the LPA before the 90 days has expired. If the Council adopts Mr. Roosa's suggested change, the Council can pull the plug on the negotiations and start the 90-day clock at any time. Mr. Reynolds expressed concern that the staff was using a hard-sell approach and was more concerned with the comfort zone of the people they were meeting with than the comfort zone of the Council. Mr. Gucciardo responded that he was merely trying to relay what Sunstream had relayed to him, not his opinion on it, so that the Council could make an informed decision. Mayor Cereceda confirmed that was how she interpreted it, but Mr. Reynolds said that was not how he interpreted it. Mr. Murphy and Mr. Isler suggested waiting until another meeting to think about it. It will be put on the agenda for February 3.

Mr. Roosa noted that the judge has passed down the opinion on Mid Island Marina that there was not substantial reason for the Council to have turned down their request. Therefore it will come back to the Council. He presented a paper with legal opinions for the Council to consider.

XVIII PUBLIC COMMENT AND INQUIRY

A JOHANNA CAMPBELL

Ms. Campbell spoke about the trolley, and said that the recent News Press article proved that when the 25-cent fare was enacted, ridership was cut in half. She thinks that getting more trolleys is a good use for transportation money. She also believes that advertising money on the trolleys is a wash financially.

B RAY MERTENS

Mr. Mertens thinks there should be a workshop on proper treatment of employees and handling problems. He felt uncomfortable sitting in a public forum hearing employees be put down and their integrity questioned. He thinks you should treat them right or fire them.

Mr. Reynolds stated that he thought the comment was directed toward him, and he didn't feel he was treating the employees unethically but he questioned whether the staff was simply giving the Council information or was using a selling-type approach. He thought perhaps they were forgetting the Council's comfort zone and missed some forethought and that they should consider the Council members a little more. He stated that he wasn't questioning the staff's integrity and that no apology was necessary.

IX ADJOURNMENT

Motion: Mr. Murphy moved and Mr. Isler seconded that the meeting be adjourned. The motion passed unanimously. The meeting was adjourned at 10:05 PM.

Respectfully submitted,

Peggy Salfen

Recording Secretary

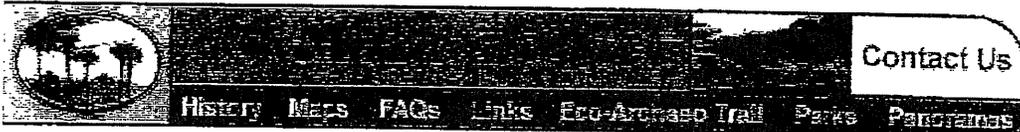
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Page 9 of 9



Council Minutes : October 7, 1996

FORT MYERS BEACH

TOWN COUNCIL MEETING

OCTOBER 7, 1996

Nations Bank, Council Chambers

2523 Estero Boulevard

FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Monday, October 7, 1996, at 6:37 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

Mr. FitzSimons gave the invocation.

IV PUBLIC COMMENTS AND INQUIRIES

A J. D. WILLIAMS

Mr. Williams stated that he has owned a company, Sundance Water Sports, for 6 years. This company sells parasail and waverunner rides, even though he does not operate the rides himself. He is a mobile operator and mentioned a letter from the county that states that he has the right to do business as a water taxi service which transfers people to licensed PWVL operators. He is not sure if he would be considered a "floating vendor" but if he is, it sounds like this ordinance is trying to get rid of them.

B PATRICK RANALLI

Mr. Ranalli stated that he is president of Ranalli Parasail Inc. He is



heights on the island. They are planning to have design workshops with the public. At their last meeting Scott Whipple gave them an overview of the overlay. Rob Fowler and Jim Elliot also talked to the LPA from a builder's perspective. Because of hearings, it is slowing down their effort to do the comp plan, so they may not make their 18 month objective.

IX APPROVAL OF CONTRACT WITH HUMANE SOCIETY FOR ANIMAL CONTROL

This was pulled from the agenda since the contract has still not been received from the society.

X DRAFT DISCUSSION OF PROPOSED BOATING ORDINANCE

On page 1, Mr. Isler suggested changing the title to Personal Watercraft ordinance, even though it covers parasails. He thinks jet skis and parasails should not be in the same ordinance. One is small equipment which is rented out to inexperienced drivers, but parasailing involves a licensed captain on a more expensive boat.

It was clarified that the PWL license belongs to the operator, not the landowner. However, if the operator does not have a land based site, they will lose their license in 30 days unless they transfer to another location. If the landowner is a non conforming use, and an operator leaves, the landowner has to get another operator in 30 days or they lose their non conforming use. But in this draft, there is a suggested cap on the number of licenses allowed and if there are no more licenses available, the non conforming landowner cannot get one.

On page 5, Section 9(1), there was a question of whether the 500 foot slow speed zone includes the pier. Mayor Cereceda expressed a concern that that would hamper the operations of the jet ski operator who is about 150 feet of the pier.

Motion: Mr. FitzSimons moved and Mr. Isler seconded that there be a 500 foot slow speed zone on all sides of the pier. Mr. FitzSimons, Mr. Isler and Mr. Murphy voted for the motion. Mayor Cereceda and Mr. Reynolds voted against the motion. The motion passed.

On page 6, it was decided to remove Section 10 altogether.

Motion: Mr. Isler moved and Mayor Cereceda seconded that on page 7, Section 11(3) the Town conform with the existing state law regarding the minimum age for renters and owners. Mayor Cereceda, Mr. Isler, Mr. Murphy and Mr. Reynolds voted for the motion. Mr. FitzSimons was opposed. The motion passed. Mr. Roosa suggested eliminating that paragraph since it now follows the state law.

On page 8, Section 12A, Marsha Segal-George pointed out that operators will only need a county occupational license.

On page 11, Section 15(5), the rule requiring a fire safety inspection is new and was suggested by the fire marshal.

Also on page 11, Section 15(6), the CPR requirement is new and the draft only requires it for the license holder, not everyone working for them.

Motion: Mr. Isler moved that the requirement for CPR be eliminated. There was no second. The motion failed.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that the CPR certificate be required of the license holder and also that a CPR-qualified person be on duty at all times. Mr. FitzSimons, Mr. Reynolds, and Mayor Cereceda voted for the motion. Mr. Isler and Mr. Murphy were opposed. The motion passed.

Also on page 11, Section 15(B), it is suggested that there be a cap on the number of licenses allowed. There are about 23 jet ski licenses now and 6 parasail licenses.

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that the cap be set at 15 jet ski licenses and 6 parasail licenses. The motion passed unanimously.

On page 11, Section 16(a), the Council had no problem with adding this paragraph.

On 15(b), Mr. FitzSimons suggested adding the words "or pier" on end.

On 16(c) the draft suggested that parasail flights must end ½ hour before sunset, but one operator has sunset flights and wants the wording to say "dusk" instead. Since the word dusk is not clearly definable, the Council wished to use the word "sunset" because it is very specific.

Motion: Mr. FitzSimons moved and Mayor Cereceda seconded that parasail operations must cease ½ hour before sunset. Mr. FitzSimons voted for the motion. Mr. Isler, Mr. Murphy, Mr. Reynolds and Mayor Cereceda were opposed. The motion failed.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that operations must cease "at sunset". Mr. FitzSimons, Mr. Reynolds, Mr. Murphy and Mayor Cereceda voted for the motion. Mr. Isler was opposed. The motion passed.

On page 12, Section 16(d) suggests that parasail operators may not fly when there is a small craft warning. Mr. FitzSimons thinks that since these are licensed captains who are familiar with wind conditions in the area they are operating, the ordinance should set a specified wind velocity. Mr. Ranalli recommended 30 mph (25 knots).

Motion: Mr. Reynolds moved that Section 16(d) remain as written using "small craft warning" as the standard. There was no second. The motion failed.

Motion: Mr. Isler moved and Mr. Murphy seconded that Section 16(d) be dropped from the ordinance, making it be the captain's decision when it is too windy to fly. Mr. Isler, Mr. Murphy, Mr. FitzSimons, and Mayor Cereceda voted for the motion. Mr. Reynolds was opposed. The motion passed.

On page 12, Section 16(e), the draft suggests that parasail operators must pass through buoys unless the lanes are too congested, in which case they may pass just to the left or right of the buoys.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that the section

stay as written. Mayor Cereceda, Mr. FitzSimons, Mr. Reynolds and Mr. Murphy voted for the motion. Mr. Isler was opposed. The motion passed.

Motion: Mr. Isler moved and Mr. FitzSimons seconded to separate the parasail ordinance and license from the jet ski ordinance and license. The motion passed unanimously.

The Council took a break at 9:20 PM and reconvened at 9:30 PM.

On page 12, Section 16(g), Mr. Roosa said there could be a problem by mentioning the grandfathered parasail license holder by name in the ordinance, making him a franchise. He suggested changing the section to read "any grandfathered..."

The Council agreed that there should be one license for one parasail boat.

On page 13, Section 19(2), it was agreed to change the second half of the description to "east of Big Carlos Pass bridge."

Motion: Mr. FitzSimons moved that on page 13, Section 19C, the vendor's telephone number be printed on the side of the vessel in 3" letters. There was no second. The motion failed.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that on page 14, Section 19H the words "or within 20 feet of the water's edge" be added to the end of the sentence. Mr. FitzSimons and Mr. Reynolds voted for the motion. Mayor Cereceda, Mr. Murphy and Mr. Isler were opposed. The motion failed.

On page 15, Section 19M(4), Mr. FitzSimons said that he does not want jet ski eco-tours in the back bay because he thinks that you can't lead a tour when people are on separate vessels, that the area is too sensitive, and that it is too dangerous.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that a period be put after the words "Estero Bay" and the rest of the sentence be eliminated. Mr. FitzSimons, Mr. Reynolds voted for the motion. Mr. Murphy, Mr. Isler and Mayor Cereceda were opposed. The motion failed.

On page 15, Section 19N addresses designated areas for pickup. Under the Lee County ordinance

parasail boats can't pick up from beach accesses or private homes. They can pick up from their primary location or at another licensed jet ski location if they have written permission from the landowner. Mr. FitzSimons feels that people don't want parasails going in anywhere on the beach. They would rather have them use the jet ski lanes which will be clearly marked. Mr. Isler thinks the parasails should be away from the jet skis rather than in the same area because of safety and congestion. According to the proposed draft, parasail captains would have the option of going to the left or right of the chute if it is congested.

Motion: Mr. FitzSimons moved and Mayor Cereceda seconded that on page 15, Section 19N be accepted as written, making parasail operators pick up and return customers at their primary location or at another PWVL location only. Mr. FitzSimons, Mayor Cereceda, Mr. Murphy, and Mr. Reynolds voted for the motion. Mr. Isler was opposed. The motion passed.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that on page 15, Section 19"O" be accepted as written, requiring parasail operators to use bucy lanes unless it is too congested. The motion passed unanimously.

Motion: Mr. Reynolds moved and Mr. FitzSimons seconded that page 15, Section 19P be accepted as written, limiting each PWVL operator to eight rentals. Mr. Reynolds, Mr. FitzSimons, and Mr. Isler voted for the motion. Mr. Murphy and Mayor Cereceda were opposed. The motion carried.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that page 15, Section 19Q be accepted as written, requiring standardized rules. The motion passed unanimously.

Motion: Mr. FitzSimons moved that in Section 21 the insurance requirement be set at one million per occurrence and one million aggregate. There was no second. The motion failed.

Discussion: The Council clarified that it would like to keep the new paragraph requiring that the declaration page be on file at the Town however.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that on page 17, Section 22-26 remain in the ordinance at least until the public hearings.

Discussion: Marsha Segal-George suggested splitting these sections out into a separate ordinance.

Amended Motion: Mr. FitzSimons amended the motion and Mr. Reynolds agreed to the sections being separated from the rest of the ordinance for separate review by the Council. Mr. FitzSimons and Mr. Reynolds voted for the amended motion. Mr. Isler, Mr. Murphy, and Mayor Cereceda were opposed. The motion failed.

Motion: Mr. Isler moved and Mr. Murphy seconded that Sections 22-26 be deleted. Mr. Isler, Mr. Murphy, and Mayor Cereceda voted for the motion. Mr. FitzSimons and Mr. Reynolds were opposed. The motion carried.

Motion: Mr. Reynolds moved and Mr. Isler seconded that on page 19, Section 28 the penalty for violation of the ordinance be civil rather than criminal. The motion passed unanimously. The Council agreed that the fine should be \$100.

XI TOWN MANAGER'S ITEMS AND REPORT

Marsha Segal-George passed out a request that had just been received from the County that afternoon asking the Council to amend Resolution 96-23 concerning maintenance of Estero Boulevard. Mr. Roosa has looked at the request and is bothered that nobody knows what some of the listed items mean. Mr. Reynolds said his objection is that the County has been requiring a lot of maintenance and he thinks the merchants should have to help. Mr. Isler said that if they don't pass it, it will just hold up the job.

Motion: Mr. Isler moved and Mr. FitzSimons seconded that the resolution be amended as requested by the County. Mr. Isler, Mr. FitzSimons, Mr. Murphy and Mayor Cereceda voted for the motion. Mr. Reynolds was opposed. The motion passed.

1 **DRAFT 10-2-96**

2 1) There are still questions about whether the fine should be
3 civil or criminal and how we try to provide more enforcement.
4 Who owns the license, the landowner or the operator. Potential
5 problem where the landowner kicks out the operator but if
6 operator owns license then landowner must still find an
7 operator who has a license.

8 2) Sections 22 through 26 are still contained in this draft for
9 consistency purposes. At the Oct. 7 meeting, Council must
10 decide whether to send these sections on to the LPA or remove
11 them.

12 Schedule: Draft goes to Council-Oct. 7; goes to LPA Oct. 15;
13 first reading Oct. 21; second reading Nov. 4

14
15 SECTION ONE: Title and Citation ISLER

16
17 This ordinance shall be know and cited as the "Town of Fort
18 Myers Beach Watercraft Safety Ordinance"

19
20 SECTION TWO: Authority

21
22 SECTION THREE: Definitions

23
24 For the purposes of this Ordinance, the following terms,
25 phrases, words and derivations shall have the meaning given
26 herein. When not inconsistent with the context, words used in
27 the present tense include the future, words in the plural number
28 include the singular number, and the words in the singular number
29 include the plural number. The word "shall" is always mandatory
30 and not merely directory.

31
32 A. "Bather" means any person who is in the same water as a vessel,
33 whether said person is swimming, wading or engaged in any other
34 activity in the water.

35
36 B. "Beach" means the soft sand portion of land lying seaward of a
37 seawall or line of permanent vegetation and seaward of the mean
38 high water line.

39
40 C. "Business" shall mean any personal watercraft rental or
41 parasailing activity business, including any commercial activity
42 engaged in the rental, leasing, or bailment for consideration of
43 personal watercraft or parasailing.

44
45 D. "Floating Vendor" means a vessel represented as a place of
46 business a professional or other commercial enterprise which is
47 used to solicit conduct or canvass for the sale or rental of any
48 merchandise, services, goods or property of any kind or character.
49 This term does not include the following types of vessels:
50

1
2
3 5. FIRE REPORT Prior to annual license renewal, the Fire
4 Marshal will submit evidence of a fire safety inspection to the
5 Town. Note: We need specifications for this from the Fire Department as to
6 what signifies compliance for storage of gasoline.

7
8 6. CPR CERTIFICATION Each license holder shall submit proof
9 of CPR certification of operation manager at license
10 renewal. Note: This is required for the operators to get their
11 insurance so this may be a redundancy.

12 ~~5-~~ 7. ANNUAL FEE Note: There has been no discussion of fees
13 to be received by the Town under this ordinance
14

15 Pays an annual fee of:

- 16 a) \$60.00 for Town administrative processing costs; and
17 b) \$30.00 for the right to offer for business, as herein
18 provided, a rental of the personal watercraft or
19 for the right to operate a parasailing activity; and
20 c) \$80.00 for Town enforcement costs.

21 Applicants who misrepresent information provided under
22 this Section shall not be issued a PWVL, or if issued, may suffer
23 suspension or revocation of the PWVL.
24

25 8. The Town Manager may issue no more than (15)PWVL
26 licenses outstanding at any point of time, and 6 Parasail PWVL
27 licenses.

- 28
29 a) Transferability of PWVL and Parasail PWVL licenses to new
30 conforming locations may only be allowed when licenses'
31 fall below 15 and 6 respectively. If there are 15 PWVL
32 licenses', then a license at a non-conforming location can
33 move that license to a conforming location and surrender
34 the non-conforming location which still results in 15
35 total licenses.
36 b) PWVL's shall be issued on an annual basis coinciding with
37 the Town's fiscal year, October 1 through September 30.
38

39 Section Sixteen: Parasail PWVL Regulations
40

- 41 a) Parasail operators must inflate and deflate chute at least
42 500 feet off shore.
43 b) Parasail operators may not fly Parasail chute over land or
44 pier, nor within 500 feet of the beach.
45 c) Parasail operators must cease operations ½ hour before
46 sunset.

47 Alternate language: Must cease operations at dusk. (some
48 operators currently offer sunset sailing)
49
50
51

1
2
3 d)Parasail operators may not operate (fly) once a small
4 craft warning has been issued by the National Weather
5 Service, as verified by records kept at the Sanibel Causeway.

6 e)Parasail operators must access the beach through PWVL
7 buoy lanes as required by this ordinance. As specified in
8 Section 19-0.

9 f)Parasail operators must have a valid and current Fort
10 Myers Beach Parasail PWVL license.

11 g)As provided in Section 15, Fort Myers Beach Parasail
12 PWVL licenses are capped at 6. However, a grandfathered Lee
13 County Parasail license holder is currently operating within
14 the Town through written agreements. The Ranalli Parasail
15 Inc. license will be allowed to operate pursuant to this
16 section and will be allowed a Fort Myers Beach Parasail PWVL
17 license. The rights to this license (Ranilli Parasail Inc.)
18 will continue as long as the license holder complies with the
19 requirements and conditions of this ordinance.

20 SECTION SEVENTEEN: PWVL RENEWAL

21
22 A. Except as provided in Subsection C, upon application, the
23 Town Manager may renew the PWVL of any applicant who:

24
25 1. Held a valid PWVL and operated the personal watercraft
26 rental or Parasailing activity business for at least nine months
27 out of the previous year, and

28
29 2. Has provided the Town with new or updated
30 information, documents, and fees listed in Section Five and
31 continues to meet the regulations set forth in the Land
32 Development Code, unless otherwise provided for in Section Ten B
33 and C, and this Ordinance; and

34
35 3. Pays a late processing fee of\$25.00 for any renewal
36 application filed after October 1.

37
38 B. Upon application, the Town Manager may renew any PWVL
39 suspended under Section Twelve, hereof, but any remaining term of
40 suspension shall be applied to the renewed license, and during
41 said term the PWVL confers no rights to offer the rental of any
42 personal watercraft or permit any parasailing operation.

43
44 C. Any PWVL not renewed by October 15th shall be void and of
45 no further use or effect whatsoever. No business deemed to be a
46 nonconforming use in accordance with Section Ten C of this
47 Ordinance, which fails to renew it's license in a timely manner,
48 shall again be issued a license except in conformity with the
49 regulations then in effect.
50

Paradise Parasail Inc.

P.O Box 2598, Fort Myers Beach
Florida, 33931

Larry Kiker
Town Mayor
Town Hall
Fort Myers Beach
Florida
33931

TOWN OF
FORT MYERS BEACH

June 25, 2010

JUN 29 2010

RECEIVED BY

COPIED TO:
COUNCIL MEMBERS
TOWN ATTORNEY
TOWN MANAGER
TOWN CLERK

Dear Mayor Kiker,

I just wanted to thank you in advance for trying to understand our position. I have put together a few documents, a photo of our "Parasail Family" and some background information to help you get to know us a little better.

After the county purchases the Seafearer's gulf front parcels, I would greatly appreciate your support in our bid with the county to continue offering parasail services at 1130 Estero Blvd..

Please feel free to call me if I can answer any questions at 239-281-7072.

Sincerely,



Dorae Smith
Paradise Parasail, Inc.

Paradise Parasail

History- Paradise Parasail was started on Ft. Myers Beach in 1982 by Ric Smith who was an operator and innovator of parasailing. Ric started working with Dorae in 1989, they married in 1991, and ran the business together for the next 18 years at 1130 Estero Boulevard. Sadly, in 2008, Ric passed away after a long battle with cancer. Dorae continues to operate the business and she is the only female owner /operator of a parasailing business in Lee County.

At Issue- If Lee county purchases the property located at 1130 Estero Blvd. Paradise Parasail would desire to remain at 1130 Estero Boulevard and requests the Town's support. In addition Paradise may need to transfer their PAL license to another location. Local Town ordinance 27-55, as it currently reads, would unjustly prevent her from transferring her license thus placing her business in jeopardy. The Town provided that only 6 PAL may be issued. A transfer is authorized only if there are 6 or fewer PAL. The Town has issued 7 PAL

Background- Paradise Parasail

- First parasail operator on Ft. Myers Beach
- Established on Ft. Myers Beach 1982 with 28 years of continuous operation
- Employees 8-10 local residents
- Member:
 - Ft. Myers Beach Chamber
 - Sanibel-Captiva Chamber
 - Lee County Chamber
 - Better Business Bureau A+ Rating
- Insured by Chubb Insurance - A+ Rated Company
- USCG Inspected Parasail Vessel
- Drug Free Operation- Member USCG drug free random drug testing consortium
- Leading and long time advertiser bringing tourists to Ft. Myers Beach
- Long time resident and homeowner of Ft. Myers Beach

1130 Estero Blvd. - This property is for sale, under contract and being contemplated by Lee County for a proposed park. Paradise currently has a PAL license for 1130 Estero Blvd. which Town license expires September 30, 2010. Paradise has been operating at this location for almost 20 years. Paradise has a lease to operate at 1130 Estero Blvd.

Cont.

Issues at point-

1. Paradise is currently prevented from transferring it's PAL license from one location to another because of existing ordinance (s). The conflict arises because it appears a clerical error occurred when the city mistakenly issued a 7th PAL license, when the existing ordinances clearly state that only 6 are allowed to be issued.
2. The other issue arises when trying to interpret the intent of ordinance 27-55 (c). The logical conclusion would be the PAL and PWVL licenses are to be treated equally. The ordinance appears to favor PWVL business over PAL license holders when it comes to transferring licenses from one location to the other. We believe it was the intention of the city to treat both businesses fairly. The ordinance permits a transfer of a PAL or PWVL if the location is grandfathered under Section 27-55(b) but that section only applies to PWVL. We believe the Town intended the ordinance to permit a transfer if "grandfathered in" under 27-55(b) for PWVL or 27-55(c) for PAL.

Ft. Myers Beach City Ordinance 27-55- This ordinance prevents PAL licenses from being transferred if there are more than 6 PAL licenses. Ft. Myers Beach City ordinance **27- 55(c)** enacted on September, 2001 prevents the city from issuing more than 6 Pal licenses. There are currently seven (7) licenses that have been operating for many years without any problems.

Remedy- Paradise Parasail kindly request the city council members and city manager to:

1. Support Paradise Parasailing to remain at its location with the county.
2. Modify Section 27-55 to reflect the current number of PAL license holders.
3. Modify ordinance 27-55 Transaferability (a)(1) to add a reference to (c) PAL license holders as was probably intended in the first place.



The Greater
Fort Myers Beach
Area Chamber of Commerce
(239) 454-7500 1-800-782-9283 Fax: 239-454-7910
17200 San Carlos Boulevard, Fort Myers Beach, Florida 33931-5306
website: www.fortmyersbeach.org • e-mail: frontdesk@fimbchamber.com

June 24, 2010

Dorea Smith
Paradise Parasail, Inc.
11751 Isle of Palms Drive
Fort Myers Beach, FL 33931

To Whom It May Concern:

Please be advised that Paradise Parasail is a member in good standing of the Greater Fort Myers Beach Area Chamber of Commerce. They have been members of the Chamber since August of 2004.

If you have any questions, please contact us at 239-454-7500

Sincerely,

Nancy Eaton
Membership Services

The Islands of
SANIBEL  **CAPTIVA**
CHAMBER OF COMMERCE

June 21, 2010

To Whom It May Concern:

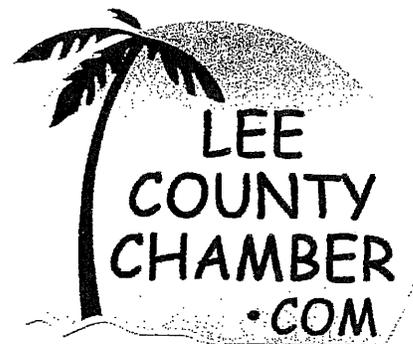
This letter is to state that the following company is a member in good standing of The Islands of Sanibel & Captiva Chamber of Commerce as of the date of this letter.

Paradise Parasail
c/o Dorae Smith
PO Box 2598
Fort Myers Beach, FL 33932

Sincerely,

Steve Ehrhart
Director of Operations

June 21, 2010



Paradise Parasail, Inc.
1160 Estero Boulevard
Fort Myers Beach Florida 33931

To Whom It May Concern,

Thank you for your continued support as a member of the Lee County Chamber since 2007.

We look forward to promoting your business.

Sincerely,

Armando Nargi

Armando Nargi
President/Founder

BBB® Serving Florida's West Coast
P.O. Box 7950
Clearwater, FL 33758-7950
(727) 535-5522 (24 Hours)
www.bbb.org

BBB Reliability Report for

Paradise Parasail, Inc.

A *BBB Accredited* business since 09/25/2009.



BBB Rating A+

BBB issues Reliability Reports on all businesses, whether or not they are BBB accredited. If a business is a BBB Accredited Business, it is stated in this report.

BBB Accreditation

Paradise Parasail, Inc. has been a BBB Accredited business since September 2009. This means it supports BBB's services to the public and meets our BBB Accreditation standards.

BBB Rating for Paradise Parasail, Inc.

Based on BBB files, Paradise Parasail, Inc. has a BBB Rating of A+ on a scale from A+ to F.

Business Contact and Profile for Paradise Parasail, Inc.

Name: Paradise Parasail, Inc.

Phone: (239) 463-7272

Address: 1130 Estero Blvd

Fort Myers Beach, FL 33931-2626

[Google Map](#)

Website: www.paradiseparasail.com

Original Business Start Date: January 1982

Principal: Mr. Neil Newton, General Manager

Customer Contact: Mr. Neil Newton, General Manager

Entity: Corporation

Incorporated: December 1990, FL

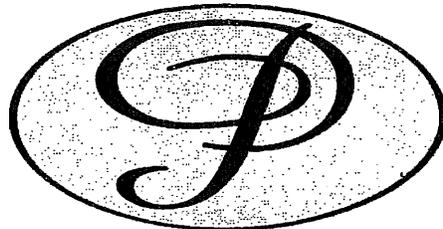
Type of Business: Tourists Attractions, Sporting Goods-Water Sports

BBB Accreditation: Paradise Parasail, Inc. is a BBB Accredited business.

Products and Services of Paradise Parasail, Inc.

This company provides parasailing services in Fort Myers Beach, Florida.

Business Management



Pierview
HOTEL & SUITES

Wednesday, June 23, 2010

To Whom It May Concern:

I want to take this opportunity to express our satisfaction with the many years of service that Paradise Parasail has provided to our guests and clients for many years. Paradise Parasail has been a good tenant and has always paid their rent in a timely manner and in agreement with our contract.

If the decision were mine, I would without a doubt extend their contract and feel very comfortable with the knowledge that we would be offering our guest a safe reliable and fun experience.

If you have any question feel free to contact me at the number listed below.

Respectfully,

A handwritten signature in cursive script that reads "Judy Coleman".

Judy Coleman
General Manager
Pierview Hotel
239-463-6158



1218 50th Avenue Plaza West, Bradenton, FL34207
Tel: 941 753 4818
Fax: 941 755 9799

June 23, 2010

To Whom It May Concern

Custom Chutes, Inc. has been manufacturing and servicing the parasail industry for over 42 years and I have been involved in this business since the 1970s.

I have consulted with the US Coastguard in order to increase the safety of the activity. Custom Chutes has a good reputation and supplies equipment to a large proportion of the world's parasail market. We have developed safety standards and equipment for the industry.

I have known Ric and Dorac Smith for over 15 years and have worked with them on new projects on many occasions and also find their staff to be experienced and courteous. They are safety conscious and their experience and input has been of great assistance over the years.

I have no hesitation in endorsing their businesses and commending their experience.

A handwritten signature in black ink, appearing to read "Christopher Abbott".

Christopher Abbott
President
Custom Chutes, Inc.

1985-1986 Lee County

LEE COUNTY OCCUPATIONAL LICENSE
THIS LICENSE EXPIRES SEPTEMBER 30, 1986

1985-1986

NO. 80-834 SEC. 101 CODE 110-3

IMPORTANT
PLEASE DO NOT TEAR, FOLD OR WRITE ON
THIS FORM. RETURN INTACT WITH REMITTANCE.
SEE REVERSE SIDE.
THANKS

| | | |
|-------------------|----|--------------|
| LICENSE | \$ | <u>15.00</u> |
| PENALTY | \$ | _____ |
| UNPAID PRIOR YEAR | \$ | <u>0.00</u> |
| COLLECTION FEE | \$ | _____ |
| TOTAL | \$ | <u>15.00</u> |

PARASAIL RECREATIONAL RIDES

LICENSE TO ENGAGE IN THE ABOVE BUSINESS PROFESSION OR OCCUPATION

PARASAIL PARADISE
RIC SMITH
TUNNOK BEACH-CAPTIVA
GENERAL DELIVERY
FT MYERS BEACH FL 33931

Mail/ct

PAYMENT RECEIVED AS CERTIFIED ABOVE
DICK STEELE, LEE COUNTY TAX COLLECTOR, FORT MYERS, FLORIDA

SIGNATURE OF APPLICANT

1993-1994 1130 Estero Blvd

APPEAR IN THIS PORTION AND EXHIBIT CONSPICUOUSLY
AT YOUR ESTABLISHMENT OR PLACE OF BUSINESS

LEE COUNTY TAX COLLECTOR
THIS LICENSE EXPIRES SEPTEMBER 30, 1994

LICENSE NO. _____ SEC. _____ CODE _____

| | | |
|-------------------|----|-------|
| LICENSE | \$ | _____ |
| PENALTY | \$ | _____ |
| UNPAID PRIOR YEAR | \$ | _____ |
| TOTAL | \$ | _____ |

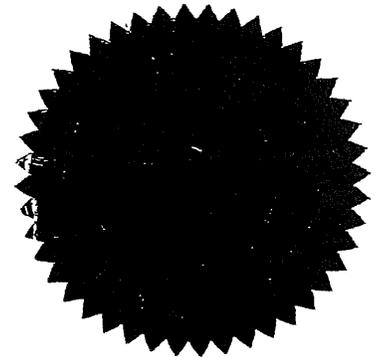
LICENSE TO ENGAGE IN THE ABOVE BUSINESS PROFESSION OR OCCUPATION

[Faded text area]

THE TOWN OF FORT MYERS BEACH

Parasail Activity License

License Number: 04
Type of Vendor: Parasail
Business Location: 1130 Estero Blvd., Ft. Myers Beach, FL 33931
Business Owner: Ric Smith, Paradise Parasail, Inc.
Property Owner: James Kotsopoulos

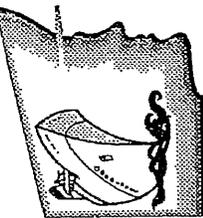


THIS LICENSE VALID
OCTOBER 1, 1997 THRU SEPTEMBER 30, 1998

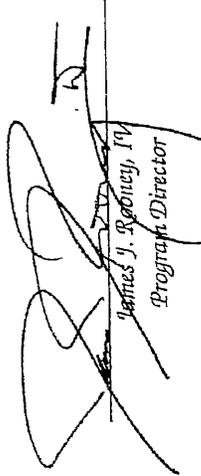
Drug-Free Workplace

This is to certify that
Paradise Parasail, Inc.

*is a client in good standing with Maritime Drug Testing Associates,
and is in full compliance with all applicable U.S. Department of Transportation and U.S.
Coast Guard Substance Abuse Regulations (49 CFR Part 40, 46 CFR Parts 4, 5, and 16,
and 33 CFR Part 95), provided all guidance is followed, for the*



Calendar Year 1991


James J. Robney, IV
Program Director

6/29/91

Date Enrolled

*The Drug Testing Solution
for the Marine Industry*



PARADISE PARASAIL
2010