



## **Fort Myers Beach Town Council**

**Council Chambers  
2525 Estero Blvd.  
Fort Myers Beach, FL 33931**

**Minutes**

**Monday, December 7, 2020**

**9:00 AM**

### **ORDER OF BUSINESS**

#### **FINAL**

##### **I. CALL TO ORDER**

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

##### **II. INVOCATION**

Town Clerk Baker.

##### **III. PLEDGE OF ALLEGIANCE**

##### **IV. APPROVAL OF FINAL AGENDA**

Vice Mayor Hosafros moved Consent Item A - LCSO Extra Duty Traffic Detail(s) for discussion.

Council Member Veach moved Consent Item C - TDC Projects for Fiscal Year 2021 2022 for discussion

Motion to approve with changes by Vice Mayor Hosafros, second by Council Member Veach. Motion carried unanimously.

##### **V. PUBLIC COMMENT**

Len Lemmer, owner of Nervous Nellies, stated that they were interested in having Bayside Park flexible to accommodate many events, create a destination for day and night and try to create a destination at the park that did not disturb the neighborhood. He spoke about the lack of lighting on San Carlos and the condition of the seawall at Bayside Park. He stated the seawall was in very poor condition and if it was repaired, they could build another fountain at the park. Peter Ennis, partial owner of Snug Harbor, noted there were not many events at Bayside Park. He discussed setting up a portable stage and bleachers with a stage near the water, adding shade without blocking the view and adding decorative pavers.

Nick Ruland from Snug Harbor emphasized the lack of lighting on San Carlos. He indicated that the lights were dim because no one knew what the turtle regulations would be years ago, per a person who worked for Ensite. He invited Council Members to visit at night.

Laurie Russell, resident and Manager of Marina Village, brought up installing a splash pad at Bayside Park. She distributed a picture from Babcock Ranch. She discussed building an interactive veteran's tribute on a walkway.

Jan Lee, resident, discussed beach erosion at Leonardo Arms. She estimated they lost 50 feet of shore from building to surf. She requested that the Town do something to restore the beach.

Chryl Neus, resident of Leonardo Arms, agreed with Jan Lee. She stated it was urgent that something is done to renourish the beach and she did not think it would withstand another storm.

Mayor Murphy suggested that the Leonardo Arms Board of Directors contact Town staff.

Boyd Sand Artist discussed tourists who visited the clock at Times Square and the monetary result.

Phil Winter, resident, discussed the lack of communication with the Mayor and some Council Members. He discussed the traffic light at Times Square and stated they needed full-time deputies on the concrete median.

Scott Saverail, property owner, discussed the trailer bathroom issue on the public right-of-way and the FEMA (Federal Emergency Management Agency) technical bulletin regarding restrooms. He requested that the vote be postponed due to the recent email problems.

Chris Schaab stated that he applied late for his chair and umbrella license. He indicated the ordinance was not being applied the same for everyone. He displayed his public hearing package and noted that his \$1,000.00 check was cashed despite being told that it would be held until the process was completed. He read the ordinance and indicated that he followed the rules, but he did not turn in a complete application. He commented that staff did not follow the rules.

Barbara Hill, Vice Chair of BORCAB, reviewed the history of redesigning Bay Oaks. She looked forward to the upcoming joint meeting and encouraged members of the community to get involved.

Gayle Mason from Restore the Arches thought the arches were going to be discussed. She suggested that everyone involved meet to find a solution.

Earl Morgan supported restoring the arches. He provided his rationale for bringing back the arches and supported placing them at Lynn Hall Park.

## **VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Vice Mayor Hosafros recognized all of the citizens of the Town of Fort Myers Beach for what all have gone through with the pandemic ~~Town Council members~~. <sup>\*amended at 01.11.2021 meeting</sup>

Mayor Murphy recognized Steve Huss and Willie Demao and sent condolences to their families.

Council Member Atterholt expressed condolences regarding Mr. Demao. He recognized a book regarding the Mound House and noted it was available at the Mound House.

Council Member Veach recognized the Beach Kids Foundation. He noted that this was their fundraising time of year and he encouraged everyone to donate to their cause. He appreciated everyone who was following CDC guidelines.

## VII. ADVISORY COMMITTEES ITEMS AND REPORTS

### A. Anchorage Advisory Committee

Kathy Light, Chair of the Anchorage Advisory Committee (AAC), indicated that staff emailed a proposal regarding purchasing two Harbor House units. She stated that they could stay with Matanzas or purchase the units. The AAC felt it was a good investment for the Town to take it in-house. She described approximate costs for the project and noted they were not allowed to make money on the Mooring Field and their goal was to come close to breaking even. Town Manager Hernstadt remarked that they were looking at the project's financial feasibility and would present data at the next M&P Session in January.

Lee Melsek, BORCAB Member and life-long resident noted that their vision for Bay Oaks was lost in the shuffle. He read a letter sent to Council Members and published to websites regarding their vision for the campus. He suggested the plan be completed in phases. He suggested that they reject the latest design and requested that BORCAB be involved in each step of the decision-making process.

## VIII. REORGANIZATION OF COUNCIL

### A. Selection of Mayor and Vice Mayor

#### **Selection of Mayor and Vice Mayor in accordance with the Town Charter.**

Mayor Murphy nominated himself for Mayor.

Council Member Veach nominated Vice Mayor Hosafros for Mayor.

Council Member Allers nominated Council Member Atterholt for Mayor. He declined.

The majority voted to confirm Mayor Murphy. Vote was 3-2; ~~Atterholt~~. \*amended at 01.11.2021 meeting

Hosafros and Veach dissenting.

Council Member Atterholt nominated Vice Mayor Hosafros as Vice Mayor.

The vote was unanimous to confirm Vice Mayor Hosafros.

## IX. APPROVAL OF MINUTES

### A. Draft Minutes November 16, 2020

Council Member Allers moved to approve the minutes; second by Vice Mayor Hosafros.

Motion carried unanimously.

## X. PRESENTATION

### Fort Myers Beach Renourishment

Michael Poff from Coastal Engineering Consultants joined Environmental Project Manager Chadd Chustz. He utilized PowerPoint for his presentation. Slides included: Current Project Scope; FDEP Designated as Critically Eroded; Shoreline Change Rates; Area of Concern; Mean High Water Line Survey and Proposed Erosion Control Line. Mr. Poff discussed patterns of erosion and accretion. Manager Chustz displayed pictures of Leonardo Arms, Bermuda Dunes and Newton Park after Hurricane Eta. Mr. Poff discussed funding requirements.

Town Manager Hernstadt suggested that Leonardo Arms Board of Directors contact Coastal Engineering. Mr. Poff stated that they contacted him, but it was a conflict of interest since Coastal Engineering worked for the Town. He suggested that properties affected by erosion get together and establish five-foot-wide public access easements through their properties that lined up with bus stops or parking to obtain credit for state and TDC funding. He noted they could also get qualified as a vacation condo rental through the Department of Business and Professional Regulation (DBPR). He suggested that condos visit the DBPR website for details.

## XI. CONSENT AGENDA

Vice Mayor Hosafros moved to approve the Consent Agenda with A. and C. removed for discussion; second by Council Member Allers.  
Motion carried unanimously.

### A. LCSO Extra Duty Traffic Detail(s)

**Approve Extra Duty Traffic Detail contract(s) with Lee County Sheriff's Office for Fiscal Year 2020-2021; Authorize the Town Manager to execute contract documents as approved in FY2021 budget.**

Vice Mayor Hosafros brought up the coronavirus and questioned whether they needed extra duty traffic detail. Town Manager Hernstadt replied that it was easier to cancel shifts if needed. Council Member Atterholt indicated that traffic was a problem now and he supported the expenditure. Council Members Veach and Allers agreed. Mayor Murphy agreed it was easier to cancel shifts.

Council Member Atterholt moved to approve; second by Vice Mayor Hosafros.

Motion carried unanimously.

B. LSCO Marine Patrol Detail

**Approve Boat Patrol contract(s) with Lee County Sheriff's Office for Fiscal Year 2020-2021; Authorize the Town Manager to execute contract documents as approved in FY2021 budget.**

Mayor Murphy moved to approve the contracts; second by Council Member Allers.

Motion carried unanimously.

C. Approve TDC Projects for Fiscal Year 2021 2022

**Approve TDC Projects for Fiscal Year 2021 2022**

Council Member Veach expressed concern regarding beach renourishment at the south end and the bathroom trailer. He did not support the bathroom trailer until the public had an opportunity to provide input. Vice Mayor Hosafros noted that they had to go through steps before requesting beach renourishment at Leonardo Arms. She stated that they could approach the TDC on an emergency basis if needed. The bathroom was a replacement and was located in a business neighborhood. No complaints were ever recorded for the restroom at that location. Council Member Veach stated that there were 11 public bathrooms on the Island. He felt they should utilize what they had before asking for more.

Vice Mayor Hosafros stated that the restroom in question was not new. Complaints from businesses were received after the restroom was removed because people were defecating on the property. Council Member Atterholt questioned the Town Attorney regarding whether he felt the restroom violated FEMA regulations or the LDC and comp plan. Town Attorney Herin replied that it was not in violation and the plat was to be used for public purposes.

He indicated that it was appropriate for that area and the restroom was not a permanent structure. He stated that the TDC request was for funding only. Council Member Atterholt questioned whether they could remove the restroom request to allow for public input. Council Member Veach cited FEMA regulations concerning base elevation and whether the area was zoned for a trailer. Town Attorney Herin replied that the restroom was not considered a trailer. Council Member Veach felt they were setting a precedent for future Councils to add restrooms on the beach. Vice Mayor Hosafros stated that businesses should not have to shoulder the brunt of cleaning up the property.

Town Manager Hernstadt described the timeline if TDC approved the funding request. He indicated there were many steps to the process and the public would have opportunities to provide input. Council Member Veach did not support requesting funds to replace the restroom.

Mayor Murphy questioned whether Vice Mayor Hosafros could speak to the TDC for feedback. Vice Mayor Hosafros hesitated to contact the TDC. She reiterated that the restroom had been there for years and they never received a complaint.

Mayor Murphy questioned whether they could create an exception for that location and exclude other locations. Town Attorney Herin replied that he was reluctant to recommend absolutes. He suggested that they could discourage bathrooms and public facilities in any other locations. Council Member Veach suggested that they create a resolution to codify the action. Town Manager Hernstadt suggested they receive consent from the adjacent property owners. Council Member Allers agreed with Vice Mayor Hosafros and stated that he received requests from the business to replace the restroom. He agreed with keeping the request on the list.

Vice Mayor Hosafros moved to approve; second by Mayor Murphy.  
Motion carried; 4-1 with Council Member Atterholt dissenting.

D. Council Policies and Procedures Manual

**Update Town Council Council Policies and Procedures Manual to reflect March 2020 Referenda changes**

Mayor Murphy moved to update the manual; second by Council Member Allers.

Motion carried unanimously.

## **XII. PUBLIC HEARINGS**

A. Ordinance 20-17; Special Events

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, REVISING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on January 11, 2021 at 9:00 AM**

Mayor Murphy read the title of the ordinance.

Community Development Director Jason Green reviewed comments by the LPA.

Vice Mayor Hosafros noted that she thought Sarah Propst recommended deletions concerning temporary uses because they appeared somewhere else in the code. She questioned whether the Town Manager would contact Ms. Propst for clarification. Town Attorney Herin stated that Vice Mayor Hosafros was correct because the temporary use of mobile homes was covered elsewhere. Town Manager Hernstadt will contact Ms. Propst before the second reading. Town Attorney Herin stated there were no significant changes but the formatting was changed to make it easier to codify.

Council Member Atterholt discussed permits for garage sales. He supported striking the language from the ordinance. Consensus was reached to strike the language.

Public comment:

Chris Schaab commented on the man who used a megaphone and video camera while walking around and preaching on the Island. He noted that some people were offended and he questioned whether that person should have to apply for a special event permit.

Public comment closed.

Vice Mayor Hosafros moved that amended Ordinance 20-17 be scheduled for a second and final hearing on January 11, 2021, at 9:00 a.m.; second by Council Member Veach.

Motion carried unanimously.

B. Ordinance 20-18; Water Supply Facilities Work Plan

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING AMENDMENTS TO THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN UTILITIES ELEMENT TO UPDATE DATA AND ANALYSIS AND THE GOALS, OBJECTIVES, AND POLICIES RELATED TO WATER SUPPLY PLANNING REQUIREMENTS OF CHAPTER 163, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE.** Open the first public hearing and schedule for second reading and final adoption on March 1, 2021 at 9:00 AM

Mayor Murphy read the title of the ordinance.

Community Development Director Jason Green provided a summary. Town Manager Hernstadt clarified that they had to prove that the Town had a water source for the Town's properties.

No public comment.

Vice Mayor Hosafros moved to schedule Ordinance 20-18 for a second hearing and final adoption on March 1, 2021, at 9:00 a.m.; second by Council Member Veach.

Motion carried unanimously.

C. Ordinance 20-19; Height and Setback Requirements

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE DEFINITIONS IN THE FORT MYERS BEACH LAND DEVELOPMENT CODE AND AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 34, OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, ENTITLED "EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS" REVISING HEIGHT AND SETBACK REQUIREMENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE.** Open the first public hearing and schedule for second reading and final adoption on January 11, 2021 at 9:00 AM

Mayor Murphy read the title of the ordinance.

Community Development Director Jason Green reviewed changes. Town Manager Hernstadt noted that anyone could request a deviation. He stated that if

property owners were willing to bring in the sides of their building to keep the view corridors open, they could add height. Vice Mayor Hosafros did not think the ordinance went far enough but she supported the compromise. She suggested that staff work on the footprint issue in the future.  
No public comment.

Vice Mayor Hosafros moved to schedule Ordinance 20-19 for a second hearing and final adoption on January 11, 2021, at 9:00 a.m.; second by Council Member Veach.

Motion carried unanimously.

### XIII. ADMINISTRATIVE AGENDA

#### A. Replacement Vehicle

**Approve the purchase of the replacement vehicle from Sam Galloway Ford in the amount of \$40,457.25 as budgeted in FY 20 budget, piggybacking Lee County Contract ITB160545, and authorizing auction of old van to replace the 2011 Ford F350XL Passenger Van.**

Council Member Veach moved to approve the purchase; second by Vice Mayor Hosafros.

Motion carried unanimously.

#### B. Wire Transfer Policy and Procedures

**Approval of Wire Transfer Policy and Procedures as recommended by external Auditors.**

Finance Director Walter Pierce explained that the policy updated the previous policy from 2013 and was recommended by the auditors.

Vice Mayor Hosfros moved to approve the wire transfer policy and procedures; second by Council Member Allers.  
Motion carried unanimously.

#### C. Town Investment Policy

**Rescind the Town Investment Policy to prevent misunderstanding on how the Town should invest and report on any excess funds available. Also to avoid continued Audit noncompliance.**

Finance Director Pierce summarized the reasons to rescind the policy. He noted it was not applicable to their current investment situation. He indicated that they were working on a compromise for reporting finances.

Council Member Veach moved to rescind the Town Investment Policy; second by Council Member Atterholt.  
Motion carried unanimously.

D. Matanzas Inn CPD

**Determine if Matanzas Inn Commercial Planned Development project has met the conditions of approval for phased development.**

Community Development Director Jason Green reviewed Condition 5 of the original CPD. He noted that the 2015 resolution restarted the clock.

Doug Speirn-Smith, owner of Matanzas Inn, noted that he thought it would be simple, but it ended up being complicated due to several issues. He felt the language was confusing and they were trying to coordinate their construction with the Town's redevelopment.

Vice Mayor Hosafros stated that the motion was too vague. Town Attorney Herin agreed and indicated they could retroactively swear in the witnesses or bring the item back on a future agenda as a quasi-judicial public hearing item. He recommended that at the bare minimum, they should swear in the witnesses.

Council Member Atterholt pressed Director Green for a staff recommendation. Director Green responded that Mr. Speirn-Smith stated that the kitchen was remodeled. Vice Mayor Hosafros questioned whether they were following code provisions. She noted that the public had a lot of input in 2015 and she felt if they went forward that a lot of people would be unhappy. She was uncomfortable with the process and the way it came through. Council Member Allers agreed with continuing the matter.

Vice Mayor Hosafros moved that they move the item to a future date, a staff report be included and that it be conducted as a quasi-judicial hearing; second by Council Member Allers.

Town Manager Hernstadt stated that there was not a clear record and they did not have a problem bringing it back. He encouraged Mr. Speirn-Smith to hire a professional to document his accomplishments and where he met the requirements.

Council Member Atterholt stated why he objected to the motion.

Motion carried; 3-2 with Mayor Murphy and Council Member Atterholt dissenting.

**XIV. FINAL PUBLIC COMMENT**

Chris Schaab discussed their traffic problem and compared it to how Sanibel directed traffic on their Island.

**XV. TOWN MANAGER'S ITEMS**

Town Manager Hernstadt stated that he emailed Council Member's Atterholt pictures for a potential location for the arches to Council and the County Manager.

Town Manager Hernstadt suggested they cancel New Year's Eve celebrations.

Council Member Allers questioned whether they could do something virtually.

Town Manager Hernstadt replied that they could via the Town's FaceBook.

Council Members agreed with canceling the event.

Town Manager Hernstadt recommended that the Town issue Mr. Schaab's permit and waive the fees.

Mayor Murphy moved to recommend that they reinstate Mr. Schaub's permit and waive associated fines; second by Council Member Allers.  
Motion carried unanimously.

#### **XVI. TOWN ATTORNEY'S ITEMS**

Town Attorney Herin reported that one of the three eviction notices was served to a derelict vessel in the Mooring Field. He commented that they were searching for one of the owners and may have to do the same for the third. He noted that they received a notice of appeal of one of the code enforcement cases. They were going to ask the court for dismissal based on the timeline.

#### **XVII. COUNCILMEMBERS ITEMS AND REPORTS**

Council Member Veach requested that they be given a summary of usage statistics for Bay Oaks, a survey concerning what the public wanted and the internal layout of the building before the joint meeting with BORCAB on January 11, 2021. Town Manager Hernstadt replied that he would check with Director of Culture, Parks & Recreation Alison Giesen for the information. Council Member Veach questioned whether they should form an ad-hoc committee regarding the veterans tribute. Council Member Atterholt agreed. Council Member Veach questioned adding restrictions regarding residential beach accesses to an M&P Session. Vice Mayor Hosafros agreed.  
Council Member Atterholt questioned whether FP&L was scheduled for a Council meeting. Town Manager Hernstadt replied that he was waiting to hear back.  
Vice Mayor Hosafros wished everyone a happy holiday.  
Council Member Allers mentioned the Women's Tree Festival over the weekend. He wished everyone a happy holiday.  
Mayor Murphy wished everyone a happy holiday season.

#### **XVIII. ADJOURNMENT**

#### **XIX.**

Vice Mayor Hosafros moved to adjourn; second by Council Member Atterholt.  
Motion carried unanimously.  
The meeting was adjourned at 12:48 p.m.

Minutes adopted with changes, January 11, 2021; Motion by Vice Mayor Hosafros and seconded by Council Member Veach. Passed 5-0.



Amy Baker, Town Clerk