



Fort Myers Beach Town Council

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

FINAL

Minutes

Monday, April 5, 2021

9:00 AM

ORDER OF BUSINESS

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

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

Motion carried unanimously.

V. PUBLIC COMMENT

Carlos Chavez, owner of businesses in Times Square, complained about a street performer who disrupted his customers while dining. He suggested that the Town determine whether the applicant had talent before issuing a permit.

Eddie Foster noted that cigarettes were a problem on the beach. She questioned whether they could prohibit smoking on beaches like California or add educational signage concerning degradation. She proposed that the Town spend one day a week cleaning the sidewalks. She questioned changing the signage to encourage people to park in the parking lot and noted that handicapped parking was not near the ramp.

Kathy Light, Chair of the Anchorage Advisory Committee (AAC), supported their motion to revisit Bayside Park for the upland service provider. She noted they had to expand their facilities and there were not many options available.

Linda Maldonado questioned whether they could change the hours for the pool so

the children could swim after school.

Patrick Duclos discussed beach patrol heckling businesses. He suggested they allocate money and resources to clean up the Town instead of issuing citations for noise and looking for reasons to fine people. He lived behind the 7-11 and noted it was a trash hole and felt the Town needed to refocus from a ticketing agency to clean up the trash. He indicated he sent emails noting that the water flow on his road would not go into the storm drains.

Captain Tim Lalor from the Lee County Sheriff West District introduced himself. Town Clerk Baker entered emails into the record from two people. The emails were previously sent to all Council Members.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach recognized Jennifer Rusk from the Marine Resources Task Force (MRTF) for developing the pop-up educational outreach series. He noted they had been at the Mermaid Festival and Diamond Head and more events were planned throughout the year.

Council Member Atterholt provided an update regarding the Clean Water Initiative. He referenced articles that appeared in the News-Press. He encouraged the community to write letters to legislators.

Vice Mayor Hosafros stated that the bloodmobile was at Chapel by The Sea and asked people to donate blood.

Council Member Allers thanked the Friends of Lovers Key for their recent event. He thanked the governor for expanding eligibility for vaccines.

Mayor Murphy noted that vaccines would be distributed on the beach. He stated that he added his name to the letter signed by area Mayors and Lee County Commissioners to the Army Corp of Engineers regarding managing releases from Lake Okeechobee. He recognized front-line workers for helping them get through season and wished them well.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Jennifer Rusk from MRTF described the pop-up booth events and provided pictures from Diamond Head and the Mermaid Festival. She noted she would forward questions from the Ask Me questionnaire to appropriate entities. She thanked everyone for their continued support. She discussed working with the Sheriff's Outreach Center.

Sam Lurie, AAC Member, discussed their motion to revisit Bayside Park for their upland services provider. He indicated that he was not aware of another feasible location. He described the Dockwa system. He urged Council to reconsider Bayside Park and noted there were concerns with Bay Oaks. Town Manager Hernstadt reviewed feedback from Harbor House.

A. Public Safety Committee

Chair John Goggin reviewed in-progress activities, including a survey to prioritize safety issues. He thanked Dawn Thomas for spearheading the process. He noted that a large percentage of calls to the Sheriff's Office were

categorized as area checks. He discussed meeting with the Fire Department regarding inspections, the foot of the bridge design, adding a Code Blue station to the tram and trolley stop on Bay, sidewalk markings, bike lanemarkings, bike lights and bells. He recognized Tom Gressman for championing bike lane markings.

VIII. APPROVAL OF MINUTES

A. March 15, 2021 Town Council

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

Motion carried unanimously.

IX. CONSENT AGENDA

Vice Mayor Hosafros moved to approve the Consent Agenda; second by Mayor Murphy.

Town Manager Hernstadt explained the Utilities Risk and Resilience Assessment. Motion carried unanimously.

A. Utilities Risk & Resiliency Assessment and Emergency Response Plan. **Accept the Selection Advisory Committee's ranking and authorize the Town Manager to execute Supplemental Task Authorization #2 with Axis Infrastructure in the not to exceed amount of \$49,700 for the creation of a Utilities Risk and Resilience Assessment and Emergency Response Plan in response to LOI-21-13-UT.**

Vice Mayor Hosafros moved to authorize the Town Manager; second by Mayor Murphy.

Motion carried unanimously.

B. Comp Plan / LDC Updates

Allocate and appropriate funds and approve Supplemental Task Authorization #2, in the amount of \$142,500 for completion of the Comprehensive Plan and Land Development Code updates, and authorize the Town Manager to execute the Supplemental Task Authorization with The Corradino Group.

Vice Mayor Hosafros moved to approve Authorization #2; second by Mayor Murphy.

Motion carried unanimously.

X. PUBLIC HEARINGS

A. ORDINANCE 21-03; Sea Turtle Conservation

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “SEA TURTLE CONSERVATION”, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Second reading and final adoption.

Mayor Murphy read the title of the Ordinance. Town Attorney Herin, Jr. stated that the hearing had been properly advertised.

Council Member Allers questioned why the definition of new construction was not changed. Environmental Project Manager Chadd Chustz replied that it was consistent with the model ordinance and was meant to be all-inclusive.

Town Manager Hernstadt offered an amendment to add a sentence regarding sea turtle lighting. Project Manager Chustz directed them to Sec. 32-105.

Discussion was held regarding allocating fines. No public comment.

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

Motion carried unanimously.

B. Ordinance 21-02: Myerside CPD Rezoning (DCI 2020-0009)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/DENYING AN AMENDMENT TO THE CURRENT ZONING MAP FOR THE PROPERTY LOCATED AT 131-151, 125 SCHOOL STREET AND 2661-2681 ESTERO BOULEVARD, FORT MYERS BEACH, CONTAINING 1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230, 19-46-24-W3-0020C.0270, AND 19-46-24-W3-0020C.0290; FROM RESIDENTIAL CONSERVATION (RC) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); APPROVING/DENYING A MASTER CONCEPT PLAN FOR HOTEL, RETAIL, AND RESTAURANT USES, INCLUDING CONSUMPTION OF ALCOHOL ON PREMISES AND APPROVING DEVIATIONS FROM THE LAND DEVELOPMENT CODE (“LDC”); PROVIDING FOR SCRIVENER’S ERRORS AND AN EFFECTIVE DATE. Second reading and final adoption.

Mayor Murphy read the title of the ordinance. Town Attorney Herin, Jr. stated that the hearing had been properly advertised and swore in those providing testimony. Ex parte communications: Council Member Veach - exchanged messages with the applicant and staff and familiar with the site; Council Member Atterholt - conversations with the applicant and familiar with the property; Mayor Murphy - conversation with the applicant; Vice Mayor Hosafros - received emails from the community and the owners and Council Member Allers - conversation with the applicant and familiar with the property.

Community Development Director Jason Green reviewed the first public hearing and supplemental report with PowerPoint. Slides included: Public Hearing; Staff Analysis; Request/Existing Uses; Staff Analysis; Comprehensive Plan Consistency; Public Realm; Equivalency Factor; Schedule of Uses; Master Concept Plan Building Details; Deviations; Staff Summary; Staff Recommendation and LPA Recommendation.

Council Member Veach questioned whether the applicant exceeded the Boulevard Category cap. Director Green replied that it was less than 70%. Council Member Veach questioned whether the request would be consistent with the Comp Plan and LDC if the conditions were accepted. Director Green responded that it would not. Town Manager Hernstadt indicated that the conditions were to make sure everything was clear and there were no surprises. Council Member Veach questioned whether the restaurant at Sea Grape Plaza was an accurate comparison. Director Green replied that restaurants were exempt from the 500 foot rule, but other uses were not.

Vice Mayor Hosafros questioned whether deviation #6 could be narrowed. Director Green responded that there were points of building corners close to the property line and it could be narrowed to a specific point. Vice Mayor Hosafros clarified that they would need three more deviations than they requested if it was approved.

Beverly Grady from Roetzel & Andress represented the applicant. She utilized PowerPoint for her presentation and introduced Patrick Vanasse from RWA Engineering. Slides included: Request; LPA Hearing and 1st Council Hearing. Attorney Grady listed the documents provided to Council Members. The presentation continued with the Applicant's Response to 31 conditions; Staff's Response and Today's Presentation.

Town Attorney Herin, Jr. noted the LPA's recommendation did not bind Council and the CPD was a site-specific zoning proposal. It would be inappropriate for Council to consider the permitted uses in a commercial resort. He indicated the applicant could request to rezone the property to a commercial resort for those uses.

Mr. Vanasse discussed the lack of response from staff. The presentation continued with a discussion of Pages 1 and 2 of staff report; Pages 2 and 3 regarding the Equivalency Factor; Consistency with Comprehensive Plan: Boulevard FLU Category (From 1st Hearing); Consistency with Comprehensive Plan: Platted Overlay (From 1st Hearing); Comprehensive Plan - Density Equivalency (From 1st Hearing); Allowable Intensity (From 1st Hearing); Existing Units & Allowable Guest Units (From 1st Hearing); Density Analysis (From 1st Hearing); Page 3 of staff report: Public Realm; Consistency with Comprehensive Plan (From 1st Hearing); Pages 4-8 of staff report: Schedule of Uses; Planned Development District (From 1st Hearing); Pages 5 and 6 of staff report: Schedule of Uses; Page 7 of staff report: Schedule of Uses; Page 8 of staff report: Schedule of Uses - Consumption on Premises; Pages 9-11: Deviations; Page 10: Deviations; Schedule of Deviations and Deviations #1-7.

Council Member Atterholt proposed a recess to review the information sent to them regarding incident reports from the Sheriff's Office on School St.

Attorney Grady stated that she would address the reports at the end of her presentation. She noted they were concerned regarding whether the conditions would affect the ability to make the project feasible. She displayed and addressed Myerside LLC Ordinance Replacement Language to the Proposed Conditions of Approval. She discussed changes to the Schedule of Allowable Uses and noted they removed the tiki hut from COP. The next slides were COP Approval; COP Deviation and Division 6 - Planned Development Zoning Districts LDC Sec. 34-931 (b): Effect.

Vice Mayor Hosafros questioned why resort and resort accessory use were included in their application. Attorney Grady agreed that they could remove resort and resort accessory use. Mr. Vanasse stated that they wanted to keep personal services for the boutique area. Owner Beverly Milligan noted they might want to offer massage services.

Public comment:

Jan Fleming and her husband toured the property and believed that what the applicant proposed was within the Town's Comprehensive Plan scope. She stated the restaurant was farther away from the school than two other restaurants located in the shopping area. She described the parking, a small store and the current historic structures. She noted the applicants improved the site from a drug-infested vagrant area. She asked how the School protected the children before the applicants purchased the property. She addressed the improvements made to the property and encouraged Council to approve the request.

Ellen Vaughn agreed with Ms. Fleming and stated the property was magnificent. She discussed the Island vibe and the comprehensive plan. Paula Kiker spoke on behalf of the project and felt it was important to maintain the characteristic of Fort Myers Beach. She discussed the walkability aspect and stated the property used to be an eyesore. She encouraged Council to embrace change.

Charlie Whitehead opposed serving alcohol so close to the school and ball fields and questioned setting a precedent for future requests. He urged Council to deny the request. He stated that he was speaking for himself.

Tom Schultz did not think that serving alcohol at the restaurant would be detrimental to children playing at Bay Oaks and the school. He felt the applicants should be able to serve alcoholic beverages and the applicants were good neighbors. He supported their request.

Rose Marie Fostini expressed concern regarding traffic backing up. She questioned whether guests could enter from School St. and exit onto Estero Blvd.

Public comment closed.

Council Members discussed the schedule of allowable uses in the ordinance on page 79. Council Member Veatch questioned whether the use of having a restaurant in a public service building available to the general public and guests was consistent with the code. Director Green explained that they asked for the restaurant as a use as part of their site development.

A discussion was held concerning the 31 conditions in the ordinance and the changes submitted by the applicant.

Town Attorney Herin, Jr. suggested that it be modified to hotel/motel use, which would accommodate the definition and make the point that cottages would be rented rather than individual rooms in the cottage. Vice Chair Hosafros agreed with the hotel/motel use and supported removing resort, resort accessory, personal services and bed and breakfast. Town Attorney Herin, Jr. suggested striking paragraph 1 of section 3 and putting it in section 4. Council Members agreed.

Council Members agreed to keep number 2 as-is and they agreed to the changes the applicant requested in numbers 3-5. Numbers 6 and 7 will remain as written by staff. Town Attorney Herin, Jr. suggested that number 8 be removed and addressed somewhere else in the document. Number 9 was modified to state the property owner shall replat the property to one parcel within one year of a Development Order. Numbers 10-12 were unchanged. Town Attorney Herin, Jr. added language to Number 13, which both parties approved. No exit signs and markings were added to Number 14 to prevent egress on Estero Blvd. Number 15 will mirror number 14. Council agreed with the applicant's language in number 16. Numbers 17 and 18 were not changed. The applicant's language in numbers 19 and 20 was approved. Number 21 was revised to state the applicant had to pay 1/3 of the cost of the sidewalk.

The applicant's number 22 was modified to add reduce ingress access. Number 23 was not changed. Number 24, as written by the applicant, was approved. Regarding number 25, the applicant conceded to start sound at 3:00 p.m. and Town Attorney Herin, Jr. noted that he would include language from the next page to number 25 as a stand-alone.

Town Attorney Herin, Jr. suggested that beer and wine be added to the applicant's number 26. Town Manager Hernstadt removed stormwater management system certification every 5 years from the language in Number 27. The applicant's number 28 was approved with the requirement of photos. Town Attorney Herin, Jr. modified number 29 and incorporated language from number 28. Numbers 30 and 31 were removed.

Discussion was held regarding the number of units allowed. Town Council approved the applicant's request for 14 units. The schedule of uses provided by the applicant was approved with the addition of identifying where personal services would be located on the MCP.

Deviations were discussed. Council agreed with Town Attorney Herin, Jr. that deviations #1 - #3 were not applicable, deviations #4 and #5 were not changed, deviation #6 was approved with language added by the Town Attorney and deviation #7 was approved with the addition of photos and dimensions in numbers 28 and 29. Regulations generally consistent with existing conditions were discussed. The applicant disagreed with the first two bullet points. Mr. Vanasse stated that they were not asking for additional height, but they asked for the difference in the way it was defined.

Town Attorney Herin, Jr. commented that that base flood elevation first floor was considered to be the first floor plus two, not base flood elevation first floor plus three. Mr. Vanasse indicated they were fine with the wording concerning height. He did not support Minimum Open Space: 50% because he was unsure how it would impact the project. He agreed to adjust the CR number of 1.2 regarding the Maximum Floor Area Ratio. Town Manager Hernstadt indicated they would take a recess and work it out.

Attorney Grady expressed concern regarding replacement trees and the covenant. She requested that they work with staff to reach an agreement that could be presented to Council at the next meeting.

Vice Mayor Hosafros moved to continue the hearing to April 19, 2021, at 9:00 a.m. or shortly thereafter; second by Council Member Veach.

Motion carried unanimously.

XI. ADMINISTRATIVE AGENDA

A. Dekeyser Street Performer Appeal

Appeal of Revocation of Street Performer Permit

Town Manager Hernstadt reviewed the appeal and complaints of lack of artistic talent. The street performer was not in attendance and Council agreed to continue the matter until the April 19 meeting.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt noted a solution had been reached concerning the bicycle rack donation at the Art Association. Council Member Atterholt commented that the Art Association preferred the silver bicycle rack over the black bicycle rack in storage. Town Manager Hernstadt replied that he would check with Public Works as to both racks' status, but either one was fine with him if they were available. He stated that U.S. Congress Members were receptive to their infrastructure letter.

He indicated that plans for Bayside Park were ready to bid out. Vice Mayor Hosafros noted that the AAC requested that they reconsider the Bayside Park decision. The matter will be discussed at the M&P Session on Wednesday.

XIV. TOWN ATTORNEY'S ITEMS

A. Resolution 21-17, STR Pre-Exemption Objection

Town Attorney Herin, Jr. read the title of the resolution.

Vice Mayor Hosafros moved to approve Resolution 21-17; second by Mayor Murphy.

Motion carried unanimously.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Hosafros stated that there was a rat problem on her street and in other areas around the island. She noted that Chapel by the Sea hired exterminators to get rid of the rat invasion. Town Manager Hernstadt responded that they would research options to treat the problem. The topic was added to an M&P Session. Council Member Atterholt verified that the lighting study consultants would complete their study in September of 2021. Town Manager Hernstadt noted the completion date was difficult to predict, but he would check with the consultant for their best guess.

Council Member Veach commented that residents complained about the noise and were not sure who to call. He provided numbers to reach the dispatcher who had access to short-term rental property managers. He discussed Senate Bill 88 regarding smoke coming from farms and adding nutrients into the water. He brought up Piney Point and questioned whether they could get involved with regulating stacks.

Mayor Murphy read a letter from a part-time resident in Nebraska who requested bells on bicycles.

XVI. ADJOURNMENT

Council Member Veach moved to adjourn; second by Vice Mayor Hosafros. Motion carried unanimously.

Minutes adopted, April 19, 2021; Motion by Vice Mayor Hosafros and seconded by Council Member Veach. Passed 5-0.



Amy Baker, Town Clerk