



Fort Myers Beach Town Council

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

Minutes

Monday, May 3, 2021

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 to approve the final agenda; second by Council Member Allers.

Motion carried unanimously.

V. PUBLIC COMMENT

Lieutenant Allen Canfield from the Lee County Sheriff's Office discussed the status of the Outreach Center. He noted that the Center closed on April 30, 2021, due to construction. He stated that 2,500 people passed through the Center since last September, 17 events were held and he listed organizations they worked with during the time period. Lt. Canfield revealed that they have not found a new location for the Outreach Center. Vice Mayor Hosafros suggested that they contact the Beach Baptist Church.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Hosafros recognized the Chamber of Commerce and all volunteers who helped with the Taste of the Beach event.

Mayor Murphy noted that he and Vice Mayor Hosafros volunteered as judges during the Taste of the Beach. He congratulated the Chamber and volunteers for a successful event. He recognized the Beach Baptist Church for hosting vaccinations and reminded people that the second Pfizer shot was available at the Church of the Ascension on Thursday, May 6, 2021.

Council Member Atterholt preliminary recognized the governor and the legislator for the clean water budget. He will provide an update once details were released. He encouraged the community to continue to send cards and letters to federal members of the government.

Council Member Veach acknowledged the Garden Club, volunteers and Town staff for planting the native plant demonstration garden on Palermo this Thursday.

VII. ADVISORY COMMITTEE'S ITEMS AND REPORTS

No reports.

VIII. APPROVAL OF MINUTES

- A. Draft minutes - April 19, 2021 Town Council

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

Motion carried unanimously.

IX. CONSENT AGENDA

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

Motion carried unanimously.

- A. HBK Financial Services Agreement

Authorize the Town Manager to execute an additional agreement with HBK CPAs and Consultants for Financial Services in the not to exceed amount of \$25,000.

Vice Mayor Hosafros moved to authorize the Town Manager; second by Council Member Allers.

Motion carried unanimously.

X. PUBLIC HEARINGS

- A. Continued - 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. Continued Second reading and final adoption from April 19, 2021

Council Member Atterholt moved to reopen the public hearing; second by Vice Mayor Hosafros.

Town Attorney Herin, Jr. reviewed actions taken since the last public hearing. Discussion was held regarding technical problems with YouTube.

A motion to recess was taken to address technical difficulties. Motion carried unanimously. Council Members were back to order at 9:39 a.m. Mayor Murphy stated that the problem with YouTube could not be immediately fixed and the meeting would be uploaded later. The meeting was available on Comcast.

Town Attorney Herin, Jr. noted that phases 3 and 4 were reversed in the ordinance, some language in Condition E. was changed, there was disagreement with Condition G. and Condition T. was changed to state that the applicant would pay 33% of the total cost to design, permit and construct a Town-approved sidewalk. The consumption of alcohol was limited to the property with COP approval in Condition X., the modified schedule of allowable uses included the tiki structure, firepit, accessory pool and sand volleyball court and added personal services in the restaurant/hotel.

Town Attorney Herin, Jr. swore in those providing testimony. Ex parte communications: Council Member Allers - email from the applicant; Vice Mayor Hosafros - approached by various people; Mayor Murphy - none; Council Member Atterholt - email from the applicant and Council Member Veach - communications with Fire Marshall.

Director of Community Development Services Jason Green stated that existing renters would remain on the property but could not take advantage of daily rates until the development order and other matters were approved.

Council Member Veach requested that a review by the fire marshal be specifically stated.

Attorney Beverly Grady from Roetzel and Andress represented the applicant. She explained why they disagreed with replating the property as one parcel in Condition G. and requested that they delete the condition. Town Attorney Herin, Jr. and Director Green explained why staff added the condition. Town Attorney Herin, Jr. suggested adding language to Condition Z. as a compromise. Attorney Grady agreed with eliminating Condition G. and modifying language in Condition Z.

Attorney Grady suggested adding precise language for the cost of the sidewalk. Council Member Atterholt suggested that the Town Manager and Public Works provide a number. Public Works Director Chelsea O'Riley was sworn in. She stated that the contract for two sidewalks on both sides of the library plus a shelter pad was \$128,183.99. Attorney Grady suggested that the applicant put in the sidewalk and the Town reimburse them for 2/3 of the cost. Director O'Riley stated the total cost for the entire length of the sidewalk was approximately \$38,000.00. Patrick Vanasse with RWA stated that he obtained a quote of \$6,000.00 for a 5-foot sidewalk from a qualified contractor.

Council Member Veach suggested that they use their contractor and build the sidewalk on their own. Attorney Grady replied that the applicant would write a check for \$12,000.00 to the Town for the sidewalk. Council Members agreed to accept the check.

Attorney Grady discussed the wording concerning renting cottages rather than units in the cottages. Town Council Members agreed to change the language to renting a unit instead of renting a cottage. Attorney Grady discussed excluding Building 8 from the minimum side setback of 15 feet and noted they always requested a side setback of 7 feet for Building 8. Vice Mayor Hosafros suggested keeping the 15-foot side setback if they had to build a new cottage because they would have to build up anyway. Attorney Grady agreed with a 15-foot side setback if a new cottage was built; otherwise, it would remain at 7 feet for Building 8.

Town Attorney Herin, Jr. reviewed the agreed-upon changes.

Council Member Veach moved to deny the ordinance. Motion failed for lack of a second.

Vice Mayor Hosafros moved to approve Ordinance 21-02 as amended pursuant to discussions in the proceedings and found it was consistent with the Town's Comprehensive Plan and Land Development Code; second by Council Member Allers.

Council Member Veach explained why he objected to the project. Town staff was emphatic the project was not consistent with the codes, would not preserve the cottages, and sets a precedent. Vice Mayor Hosafros felt it was important to preserve cottages. She did not think the neighborhood was residential any longer and felt it was a unique situation.

Council Member Veach felt that the line from residential to commercial was crossed. Mayor Murphy disagreed. He expressed concern regarding the school, but he did not think it was a deal-breaker due to the owners' assurances and conditions placed on the project. Council Member Allers noted he had initial concerns about the cottages and alcohol consumption, but the conditions imposed and compromises helped change his mind.

Council Member Atterholt noted the project was unique and eclectic and many in the community supported maintaining that character. He felt it was an innovative proposal and was a nice contribution to broader changes on the island.

Motion carried 4-1 with Council Member Veach dissenting. Mayor Murphy read the title of the ordinance into the record.

XI. ADMINISTRATIVE AGENDA**A. 2021 Citizen of Distinction**

The Town has received the nomination of Janine Fleming and Janine Paulauskis for the annual Fort Myers Beach Citizen of Distinction Award for their #WeAreFMB campaign.

Council Member Veach moved to award the Fort Myers Beach Citizen of Distinction Award to Jan Fleming and Janine Paulauskis; second by Council Member Allers.

Vice Mayor Hosafros described why she and former Mayor Cereceda nominated them for the award. Council Members Atterholt and Veach added their support. Mayor Murphy congratulated the recipients.

Motion carried unanimously.

B. Lee County Interlocal Agreement - Amendment 6

Authorize the Town Manager to amend the interlocal agreement with Lee County for Water and Stormwater Improvements Sanitary Sewer. This establishes the construction costs associated with the installation of Lee County's wastewater lines reimbursed to the Town at an amount of \$701,305.00.

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

Motion carried unanimously.

C. RFQ-21-09-EN Beach Renourishment Professional Services Rankings

Accept the recommended rankings for RFQ-21-09-EN and authorize the Town Manager to enter into negotiations with the highest ranked firm, Coastal Engineering Consultants, for Beach Renourishment Professional Services.

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

Motion carried unanimously.

D. Interlocal with Lee County School Board

Ratify Resolution 21-23 for an Interlocal agreement with the School Board of Lee County for the exchange of real property and improvements in exchange for property historically used as part of the Bay Oaks Recreational Campus and other commitments

Council Member Veach moved to ratify Resolution 21-23; second by Council Member Allers.

Motion carried unanimously.

E. Proposed 2021 Town Council Meeting Schedule

Approve the monthly schedule for Town Council meetings through December 2021

Vice Mayor Hosafros noted there was a conflict with two TDC (Tourist Development Council) meetings and she preferred the alternative dates listed for Council meetings so she could attend the TDC meetings. She also suggested second December (20th) meeting be considered a tentative date if necessary. Council Members agreed to use the alternative Council meeting dates to avoid a conflict with the TDC meetings.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt noted that the audit should be completed up soon. He stated that the survey published by the Public Safety Committee (PSC) had 550 responses so far and it was still available. The lighting consultant was wrapping up their second presentation to stakeholders and will begin meeting with the PSC and MRTF (Marine Resources Task Force). Recommendations will be presented to Town Council. FDOT (Florida Department of Transportation) will provide an update regarding the bridge in June.

Town Manager Hernstadt reported that Dan Weber from B.A.S.E. located a lost child on Friday and reunited them with family members.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. reported that the Town prevailed in the Key Estero Shops appeal case. He noted the property owner could appeal the case. He stated that another code enforcement matter regarding White Sand Properties of Fort Myers Beach was appealed, but the Town had not been formally served yet. He received notification from outside counsel concerning the ADA lawsuit filed by Mr. Rood.

The federal court denied the motion to dismiss the lawsuit but stated the arguments made by Town were more appropriate for the next stage of the process. Outside counsel will start the process of discovery and preparing the case for a motion for summary judgment.

The Bert Harris claim in the Jamison case was briefed and a supplemental argument would take place this week. He felt cautiously optimistic that the judge will issue an order in their favor.

Council Member Allers questioned why he was not aware of the rulings. Town Attorney Herin, Jr. apologized and encouraged Council Members to reach out to him for details on legal matters circulating on social media.

Town Attorney Herin, Jr. stated that the organizational meeting for the Nuisance Abatement Board (NAB) would be held at 1:30 p.m. in Council Chambers.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers mentioned a piece of property at the end of Virginia might be suitable for the Upland Services Provider. A full discussion of the topic will be held on Thursday. He suggested temporarily using the property at the base of the bridge for the Sheriff's Outreach Center. Vice Mayor Hosafros preferred to wait until the Sheriff's Office contacted the Beach Baptist Church for a temporary solution. Council Member Allers discussed keeping the Outreach Center in a visible location in Times Square. Council Member Veach suggested the right-of-way by 7-11 on Palermo.

Vice Mayor Hosafros mentioned a conversation with Town Manager Hernstadt regarding a party interested in bidding for the Tourist Info Center. Town Manager Hernstadt explained that he contacted the former operator of the information booth and suggested they work with the interested party to acquire the booth or work out a subcontracting arrangement. He stated that whatever happened, the information booth would have to stop operating in about a year due to construction. Vice Mayor Hosafros reported that all TDC grants for the Town were preliminarily approved at a recent workshop. She noted there were still a couple of steps before formal approval. She congratulated Cultural Parks & Recreation Director Alison Giesen and staff for submitting high-quality grant applications.

Mayor Murphy reminded everyone again that vaccines were available at the Church of the Ascension on Thursday, May 6, from 1 p.m. to 5:00 p.m. He noted they would be saying goodbye to businesses due to Margaritaville construction and congratulated the owners of the Mermaid and Bruce Cernak for his tenure. No items from other members.

A. Review of Emergency Declaration #8

Council Member Allers stated that the governor lifted all COVID-19 restrictions and felt it was time to end Emergency Declaration #8. Vice Mayor Hosafros added that the CDC issued new guidelines that conflicted with the Town and she was in favor of dissolving the Declaration. She supported allowing businesses to continue to require masks. Mayor Murphy added that anyone who continued to wear masks should not be ridiculed. Council Member Veach noted that the people who were against wearing masks were also against getting the vaccine. Council Member Atterholt supported retiring the mask mandate.

Vice Mayor Hosafros moved to direct the Town Attorney to prepare a document that dissolved Emergency Declaration #8 effective today; second by Council Member Allers.

Mayor Murphy discussed protecting the community and encouraged people to continue to wear masks if they felt unsafe and continue to social distance when necessary.

Motion carried 4-1 with Council Member Veach dissenting.

Vice Mayor Hosafros made it clear to Town Manager Hernstadt that staff could implement policies for differing situations to protect certain people. Even though Emergency Declaration #8 was dissolved, staff still had the authority to make rules regarding events.

Discussion was held regarding removing the Town Manager's discretion for special events. Town Manager Hernstadt explained how he decided whether special events were safe per CDC guidelines. Mayor Murphy supported continuing to give the Town Manager discretion. Town Manager Hernstadt stated that events were happening anyway. Consensus was reached to remove the Town Manager's discretion for special events.

XVI. ADJOURNMENT

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

The meeting was adjourned at 12:18 p.m.

Minutes adopted with changes, June 7, 2021; Motion by Vice Mayor Hosafros and seconded by Council Member Veatch. Passed 5-0.



Amy Baker, Town Clerk