



Fort Myers Beach Town Council

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

Minutes

Monday, October 4, 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 agenda with C. pulled for discussion; second by Council Member Veach.

Motion carried unanimously.

V. PUBLIC COMMENT

Karen Woodson, resident, made herself available for questions regarding her application for membership in the LPA (Local Planning Agency).

Ellen Vaughn, resident, expressed her interest in joining CELCAB (Cultural and Environmental Learning Center Advisory Board).

Jane Plummer, resident, stated that she was interested in renewing her membership in the LPA.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Allers congratulated Fire Chief Martin on his promotion.

Vice Mayor Hosafros thanked the people at Lee County Waste Management Facility for giving her a tour of the facility.

Mayor Murphy congratulated Chief Martin.

Council Member Atterholt thanked everyone involved with the Keep Lee County Beautiful campaign. He attended the Restore the Arches fundraiser and thanked everyone involved with the fundraiser.

Council Member Veach congratulated Chief Martin and thanked Chief Love for his service.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS**A. Public Safety Committee**

Chair John Goggin recognized Tom Gressman's contributions to the PSC and thanked him for his service. He discussed why members expressed disappointment and frustration regarding lost opportunities. He requested a joint meeting between the Town Council and the PSC to discuss priorities for next year. He recommended that Town Council Members rotate attendance at their meetings. Town Council Members agreed with a joint meeting. Town Manager Hernstadt will coordinate the meeting.

VIII. APPROVAL OF MINUTES**A. Town Council meeting - September 9, 2021**

Amendment: Add the vote to the legal services contract renewal in the Administrative Agenda.

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

Motion carried unanimously.

B. Management & Planning Session - September 16, 2021

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

Motion carried unanimously.

C. Town Council meeting - September 16, 2021

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

Motion carried unanimously.

IX. CONSENT AGENDA

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

Motion carried unanimously.

- A. Resolution 21-49: Stray Animal Control Services Five-Year Interlocal Agreement

Approve Resolution 21-49; Approve and Execute a 5-Year Interlocal Agreement with Lee County for Stray Animal Control Services for services within the Town of Fort Myers Beach for an annual fee (to be assessed prior to each fiscal year).

Council Member Veach moved to approve Resolution 21-49; second by Vice Mayor Hosafros.

Motion carried unanimously.

- B. Ratify the Direct Purchase of Site Furnishings

Ratifying and approving the direct purchase of site furnishings including benches, bicycle racks and garbage/recycle containers from Anova in the amount of \$116,569.28, waiving the Town's competitive procurement policies and procedures and authorizing the Town Manager to execute contract documents.

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

- C. Resolution 21-50; Authorized Representatives of Town Business Credit Card Account

Approve Resolution updating Town representatives, signatories and users of the Town's Trust Business Credit Card Account f/k/a SunTrust Bank

Council Member Allers suggested that they review signatories and users annually. He noted that some names listed had been gone for a while. Vice Mayor Hosafros agreed and thought the Audit Committee would have something to say about the topic. Town Manager Hernstadt explained who had cards, the credit limits and monthly reconciliations. He noted that he would update the names with the bank.

Vice Mayor Hosafros moved to approve Resolution 21-50; second by Mayor Murphy.

Motion carried unanimously.

X. PUBLIC HEARINGS

A. Coast Guard Temporary Use Permit

Approve installation of two modular office trailers with utility hookups and temporary fencing inside the Moss Marine warehouse for approximately 2 years.

Town Attorney Herin, Jr. swore in those providing testimony for all three public hearings. No ex parte communications.

No members from Moss Marine or the Coast Guard were in attendance. Community Development Director Jason Green reviewed the temporary use permit. Town Manager Hernstadt added that the Coast Guard headquarters was being renovated and the trailers would provide an office to continue business.

No public comment.

Council Member Atterholt moved to approve the installation of two modular office trailers; second by Council Member Allers.

Motion carried unanimously.

B. VAR20210058 506/508 Carlos Circle Variance for Pool Location and Street Setback

Approve/Approve with Conditions/Deny VAR20210058 506/508 Carlos Circle Variance for Pool Location and Street Setback

Director Green reviewed the variance request and conditions. He noted that the LPA and staff recommended approval with conditions. Council Member Atterholt questioned whether they could add more buffers to protect the neighbors from noise. Director Green recommended a five-foot type B buffer. Ex parte communications: Council Member Veach - none; Council Member Atterholt and Mayor Murphy had contact with the owner; Vice Mayor Hosafros - drive by and Council Member Allers - drive by.

Town Manager Hernstadt noted that additional landscaping could be installed to the right of the pool. Town Attorney Herin, Jr. added that fencing could be required.

Public comment:

Jack Holsem, applicant, noted that they intended to enhance the property and he had no objection to adding a six-foot fence along the property. He requested a five-foot type B buffer on the notched-out portion around the pool instead of a ten-foot type B buffer.

Public comment closed.

Town Attorney Herin, Jr. reviewed the modifications discussed.

Council Member Allers moved to adopt Resolution 21-45 with the amended changes; second by Council Member Atterholt.

Motion carried unanimously.

C. SEZ20210050 Special Exception for Consumption on Premises and Video Arcade for Adults

Approve/Approve with Conditions/Deny SEZ20210050, a Special Exception for Consumption on Premises (2COP) and Video Arcade for Adults

Director Green reviewed the Special Exception application as stated on the blue sheet. He provided property information, LPA recommendations on the adult arcade and consumption on-premises. He noted the LPA denied the adult arcade but approved the 2COP.

Ex parte communications: Council Member Allers - drive by and all members received an email of opposition.

Attorney Robert Burandt represented the applicant, Suzanne Bahan. He utilized PowerPoint for his presentation. Slides included: History of the building next door; Purchase of the adjacent property, Floor plan, What is Adult Gaming?, Adult Gaming Locations Near FMB; High Rollers 777; Paradise Arcade 777 and Conclusion.

Ms. Bahan explained how prizes were redeemed and noted other arcades in the area were very safe. She estimated installing five to ten machines in addition to a wine and beer bar and retail. She added that she would hire security and include cameras. Ms. Bahan expected to spend between \$75,000-\$100,000 renovating the building.

Vice Mayor Hosafros noted that if they granted a special exception for a use not in the code, they would basically be adding it to the code without public input. She mentioned a Florida Supreme Court case that preempted regulation of arcades. Town Attorney Herin, Jr. replied that games of chance were regulated by the Sheriff's Office and the State Attorney's Office. Vice Mayor Hosafros read the 2017 decision that preempted all adult arcade games by the state. She stated she would not be comfortable voting for the 2COP without knowing what it was attached to.

Attorney Burandt argued that it was a legitimate and legal use and would be regulated by the state. Ms. Bahan stated that she wanted to open a wine bar and would drop her request for adult arcade machines.

Public comment:

Jane Plummer stated that the LPA's concern was how the adult arcade fit with a family-friendly island. She added that they approved the 2COP portion so they could move on with a retail establishment.

Public comment closed.

Council Member Veach agreed it would set a precedent that they would not be able to control, and he would not support the request. He did not object to the 2COP request in that location.

Council Member Atterholt agreed that the adult video arcade needed a deeper look. He supported the 2COP request.

Council Member Allers questioned whether they could pass one without the other. Town Attorney Herin, Jr. replied affirmatively.

Council Member Atterholt moved to approve the 2COP license for SEZ20210050 without the video arcade provision as set forth in the staff report and recommended by the LPA. It was consistent and met the criteria for the 2COP as directed by staff and the LPA; second by Council Member Veach.

Council Member Veach stated that he did not have a problem with the 2COP in that location. Vice Mayor Hosafros noted she was not comfortable voting for the motion without knowing what was taking the place of the arcade machines. Council Member Allers supported moving forward with the 2COP.

Motion carried unanimously.

XI. ADMINISTRATIVE AGENDA

A. North Estero Phase 2 Part 2 staging

Extend Staging Area Agreement with Mitchell & Stark Construction Company, Inc. for use of Town controlled parking lot #3 as a staging area during the North Estero Phase 2 Part 2 Utilities project from 6/18/21 through 12/31/2021 with FDOT's approval.

Council Member Veach moved to approve; second by Council Member Atterholt.

Town Manager Hernstadt stated that 35 spots at Town Hall were now open to the public on weekends. He explained why they needed the staging area and noted that the other lots were open. Motion carried unanimously.

B. Community Development Professional Services

Approve Supplemental Task Authorization to develop Workforce Housing policies and programs as well as Comprehensive Plan/LDC coordination with Sarah Propst of Axis Infrastructure for a not-to-exceed amount of \$26,880 and authorize the Town Manager to execute the required documentation.

Vice Mayor Hosafros moved to approve the supplemental task authorization; second by Mayor Murphy.

Town Manager Hernstadt explained why Ms. Propst was needed. Vice Mayor Hosafros added that Ms. Propst's work was in addition to the LDC changes. Council Member Atterholt questioned whether they could include a parking dynamic within Ms. Propst's workforce housing scope. Council Member Veach felt that parking should be discussed with traffic. He felt that making her scope broader would make her job more complicated and harder to execute.

Motion carried unanimously.

C. Estero Boulevard Landscaping Contract

Approve and authorize the Town Manager to execute a piggyback contract with P&T Lawn and Tractor Service Inc. with a Not To Exceed (NTE) Price of \$100,000 for Estero Boulevard landscaping of perennial peanut (and services related to) Lee County's contract RFP170225KLC, Landscape Maintenance and Mowing for DOT.

Town Manager Hernstadt clarified that the contract included the installation of landscaping.

Vice Mayor Hosafros moved to approve and authorize the Town Manager; second by Council Member Veach.

Council Member Veach requested that the plants be native to Florida, such as Sunshine Mimosa. Vice Mayor Hosafros did not disagree. Town Manager Hernstadt replied that they would work with experts regarding the ground cover.

Motion carried unanimously.

D. Roar Off Shore**Change to Special Event permit - Roar Offshore**

Tim Hill from Roar Offshore explained why they needed a change to their permit.

Vice Mayor Hosafros moved to approve the amendment to the special event permit; second by Council Member Atterholt.

Motion carried unanimously.

E. Christmas Tree Festival at FMB Woman's Club for 12/10/ & 12/11/2021 **Special Event - Christmas Tree Festival at FMB**

Woman's Club Megan Allers and Mari Torgerson from the Fort Myers Beach Woman's Club described their event and noted that nothing changed from last year.

Council Member Veach moved to approve the special event permit; second by Council Member Atterholt.

Motion carried unanimously.

F. 11th Annual Putt & Pub Crawl**Special Event- 11th Annual Putt & Pub Crawl**

Vice Mayor Hosafros moved to approve the special event permit; second by Council Member Atterholt.

Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

Jane Plummer, resident, hoped that the Town Council would maintain the December 31, 2021 deadline for the staging area under the bridge. She noted tourists needed the parking. She reminded Town Council that they did not support workforce housing in the past and thanked them for changing their attitude.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt noted that a past Town Council did not support workforce housing.

He stated that the town might get disability policy insurance at a lower rate and better coverage with another insurance company. He received support to move forward. He noted he would renew the audit firm's contract and work with them to get the work done on time.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. informed Town Council that the lawsuit regarding the dock on Crescent St. was dismissed. He noted that the Florida Supreme court ruled that neighbors could not enforce the town's rules and regulations.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers noted he was waiting for an update regarding the AV system and the Sheriff's Office had not received the lease agreement for the outreach center property. Town Attorney Herin, Jr. stated they would receive the lease today.

No items from other members.

A. Local Planning Agency Appointments

Appoint Members to the FY2021-2022 Local Planning Agency (LPA)

Town Attorney Herin, Jr. stated that they could vote on all appointments with one motion.

Vice Mayor Hosafros moved to appoint all the applicants listed in the notebook to the appropriate committee they requested; that they honor the resignation of Anita Cereceda from the NAB (Nuisance Abatement Board) so she could accept the appointment to the LPA (Local Planning Agency) and they grant a waiver to those who maybe asking to serve on more than one committee; second by Council Member Atterholt.

Motion carried unanimously.

Anita Cereceda, Jane Plummer and Karen Woodson were appointed.

- B. Anchorage Advisory Committee Appointments
Appoint Members to the FY2021-2022 Anchorage Advisory Committee (AAC)
(See A) Douglas Eckmann, Gregory Holmes and Mike Ratliff were appointed.
- C. Audit Committee Appointments
Appoint Members to the FY2021-2022 Audit Committee
(See A) John Goggin and Edward Lombard were appointed.
- D. Bay Oaks Recreational Campus Advisory Board Appointments
Appoint Members to the FY2021-2022 Bay Oaks Recreational Campus Advisory Board (BORCAB)
(See A) Rebecca Guidry, Barbara Hill, Holly Sweeten and Karen Woodson were appointed.
- E. Cultural and Environmental Learning Center Advisory Board Appointments
Appoint Members to the FY2021-2022 Cultural and Environmental Learning Center Advisory Board (CELCAB)
(See A) Ellen Vaughan, Becky Werner and Lorrie Wolf were appointed.
- F. Historic Preservation Advisory Committee Appointments
Appoint Members to the FY2021-2022 Historic Preservation Advisory Committee (HPAC)
(See A) Beverly Milligan and Lorrie Wolf were appointed.
- G. Marine Resources Task Force Appointments
Appoint Members to the FY2021-2022 Marine Resources Task Force(MRTF)
(See A) Wendy DeGaetano, Gregory Fossum and Mary Rose Spalletta were appointed.
- H. Public Safety Committee Appointments
Appoint Members to the FY2021-2022 Public Safety Committee (PSC)
(See A) Mike Childs and James Knickle were appointed.

XVI. ADJOURNMENT

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

Meeting adjourned at 11:28 a.m.

Minutes adopted, October 18, 2021; Motion by Vice Mayor Hosafros and seconded by Council Member Veach. Adopted 5-0.



Amy Baker, Town Clerk