



Fort Myers Beach Town Council

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

Minutes

Monday, March 7, 2022

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 Veach.

Motion carried unanimously.

V. PUBLIC COMMENT

Tom Torgerson, resident, provided an update regarding Margaritaville and noted they were on schedule. He introduced Chief Operating Officer Robert Kisobeth, who stated they were actively recruiting a management team. He added they would hire between 250-300 employees.

Dave Nusbaum, President of Island Winds Condominiums, discussed the new glass ordinance and unintended consequences. He commented that they were halfway through their 10-year project to replace the windows but had to stop because there was no grandfather clause. Mr. Nusbaum stated that Fort Myers Beach appeared to be the only municipality in Florida that went to a .15 tint instead of a .45, which was recommended by the FWC (Fish & Wildlife Conservation Commission). He displayed a sample of the glass. He noted that they supported Turtle Time, but they had to find a balance.

Patricia Rittinger, resident of Island Winds, read a letter from Gateway Villas Condominium Association regarding the glass. Many owners installed sliding glass doors with the .45 tint. The board could not approve the installation of .15

glass doors because the new glass conflicted with the condominium's governing documents, which stated there could be no alterations changing the physical appearance of the property. They asked the Council to consider a minimum 5-year moratorium on implementing the .15 glass to allow the industry to find suitable alternatives.

Lisa Price, Property Manager at Island Winds Condominiums, read a letter from Terry Neal, the President of Sandarac II, Condominiums. They requested changing the ordinance to a .45 tint due to the exterior uniform appearance requirement in the bylaws. Costs were considerably higher and the product was not widely available. They requested a 5-year moratorium.

Sue O'Brien from the Sand Caper Condominiums read a letter from the President. The letter stated that 45% of owners had upgraded their sliding glass doors with hurricane impact doors. The ordinance directly conflicted with their governing condominium documents regarding changing the exterior appearance. The President asked that the ordinance be revised to apply to new construction only. John R. King represented Islands End Condominium Association. He supported the other condominiums and their concerns regarding the .15 glass tint. He proposed candidate forums before the upcoming elections.

Dave Wisor, President of Smuggler's Cove Condo Association, requested a moratorium on the ordinance. He stated the .15 glass made the condos too dark to move around without turning the lights on. He appreciated Environmental Project Manager Chadd Chustz working with them regarding tints.

Jennifer Brown, General Manager at Mariner's Boathouse and Beach Resort, represented the condominium and read a letter from the President. She indicated the building was constructed in 1985 and it was time to replace the sliding glass doors facing the Gulf. The new glass was too expensive, and they struggled to find vendors who carried the product. The president stated they needed time to implement the change and asked for a 5-year moratorium.

Bob Loria, Vice President of Mariner's Boathouse, had a letter from the Director of Operations of VRI regarding the .15 glass requirement. He noted the change to their units would be too dramatic and hoped Town Council would reconsider the ordinance.

Edward McCabe, Board Member at Carlos Point, read a letter from the President regarding the .15 glass requirement. He requested that they revise the ordinance to the .45 glass. Mr. McCabe stated that the new ordinance did not make sense. Sharon Hegstrom, President of Castle Beach Condominiums, stated they had been making structural repairs to the building for the last four years and were stretched to their limit. She noted they followed turtle lighting regulations and were involved with the FWC birding project. The new glass was costly and would affect their views. She asked that the Council reconsider their decision concerning the .15 glass.

Marty Weit, resident, addressed the property purchased by the town behind TownHall for a new upland service building. He did not support the project and increased traffic on the canal.

Larry Abramoff, resident, discussed the land purchased on Tropical Shores and stated it was a residential neighborhood. He described intrusions on their property

and noted the canal was shallow during low tide. Neighbors were concerned that the canal would be too crowded and they would eventually lose the mangroves. Mr. Abramoff indicated he sent a list of several commercial sites available to staff and suggested they make one of those locations work. He remarked that it belonged in a commercial district and he offered to work with the town regarding other locations.

Star Sherwood, resident, was opposed to the project and felt it could be an unsafe environment and would intrude on their privacy.

Gloria Abramoff, resident, was opposed to the project. She stated that their canal was one of two with an intact mangrove site. She urged them not to go forward with the building.

Todd Zachinelli, resident, opposed the project and felt it would turn their neighborhood into a commercial area.

Harvey Staley, resident, was opposed to the project. He asked that they reconsider. Sylvia Lucas, resident, thanked Council Member Veatch for meeting with them. She described the neighborhood and the wildlife in the canal and mangroves and was concerned about the environmental impact.

Eddie Foster applauded the new beach access signs. She discussed the parking area at Pine Ridge Road and noted it was not used much. She indicated the signs on Summerlin were not adequate to bring attention to the lot. She suggested adding trash cans on the sidewalks at beach accesses and adding signs telling people to cross in crosswalks.

Joe Orlandini, resident, discussed the liens on Sunset Grill and asked that they release the liens on the Estero Blvd. homes. The owners could not close on the houses until they were removed from the LLC. He noted it was costing them a lot of money. He asked that they add the issue to the agenda.

Chase Hussey brought up PWVL and PAL renewals. He stated he purchased the parasailing business from Patrick Renalli.

Jen Rusk attended the Citizens Academy and thanked Town staff, Town Clerk Baker and Communications Coordinator Jennifer Dexter. She was concerned regarding the lighting plan and encouraged Council to include input from Advisory Committees. She invited community members to attend Marine Resources Task Force meetings and encouraged everyone to stop by the pop-up events.

Terry Persaud, business owner, discussed issues at Sunset Beach Tropical Grill. He stated he had been trying to resolve them for four years. Their liquor license was revoked. He reviewed their history of denied permit applications, pending legal matters and violations. He requested a meeting with a neutral mediator to resolve the issues and requested that the town remove the lien on the houses and put them on the Sunset Grill.

Sarah Spector with Roetzel and Andress represented Mr. Persaud. She requested that the violations be removed from other Persaud properties. She described communications with town staff regarding fines and violations and noted she had not received any correspondence after February 15. She stated they wanted to resolve the issues.

Steve Johnson, resident, discussed the last Management and Planning meeting

regarding the lighting ordinance and accent lighting. He stated light pollution was not minimized at Bayside Park or Times Square due to the uplights. He described the glare from uplights and indicated there were ways to design with responsible lighting.

VI. PRESENTATIONS, LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Members Veach and Atterholt recognized the Citizens Academy class. Vice Mayor Hosafros appreciated the thoughtful, polite and civil comments by the community. She congratulated Adam Knight from the Mound House for writing an article regarding his project at the Mound House. She noted it was published in The Legacy magazine.

Council Member Allers welcomed the Shrimp Festival and St. Patrick's Day Parade. He thanked Cultural Parks & Recreation Director Alison Giesen and staff for hosting the memorial for Dan Hughes.

Mayor Murphy agreed the reception at the Mound House was very well done. He relayed that his father thanked Town Council for his 100th birthday proclamation.

A. Lee County Sheriff's Update

Captain Lalor described increased traffic enforcement and new drinking and driving signs. He stated they worked with ABT (Alcoholic Beverage and Tobacco) regarding underage serving. Vice Mayor Hosafros suggested more law enforcement and publicity regarding drinking and driving on the beach. Captain Lalor stated that one of the two fatalities involved alcohol and traffic enforcement was a priority. Dennis Petrarca, Lieutenant from the Sheriff's Office, described penalties for moving violations and legal issues with checkpoints. Captain Lalor stated that he would work with their public information officer concerning enhancing public safety.

B. Problem Gambling Awareness Month

The Florida Council on Compulsive Gambling requests the Town Council proclaim March 2021 as *Problem Gambling Awareness Month* in Fort Myers Beach

Mayor Murphy read the proclamation.

C. FMB Citizens Academy Graduation

Mayor Murphy presented diplomas to the Citizens Academy class. Town Clerk Baker thanked the staff for their hard work, described the class and congratulated the graduates.

VII. ~~ RECESS AND REFRESHMENTS ~~

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

A. Public Safety Committee (PSC)

Chair Dawn Thomas reported that they met with members of the homeless community outreach program, bells and lights for bicycles were promoted and continued to be distributed. The PSC website was enhanced and updated.

They were working with Tiffany Wood from Lee County Sheriff's Dept regarding organizing neighborhood watch programs. They communicated with Jennifer Campbell from the Fire Department regarding educational materials to add to their website. She noted they met with Rob Phelan from LDOT (Lee County Department of Transportation) concerning bicycle markings, signage and crosswalks. She requested that PSC be kept in the loop regarding lighting crosswalks.

Council Member Allers suggested that PSC contact FP&L (Florida Power & Light) regarding replacing burnt-out lights. Chair Thomas agreed.

Vice Mayor Hosafros brought up publicizing helmets for bicyclists. She noted that many bicyclists' rode against traffic, which was against the law. Chair Thomas replied that they discussed the issue with Mr. Phelan and he mentioned eye fatigue from too many signs. She noted they needed to find a balance.

Chair Thomas summarized their conversation regarding churches providing services to less fortunate people, many of whom were not homeless.

A discussion was held regarding distributing lights and bells.

IX. APPROVAL OF MINUTES

A. February 7, 2022 Town Council meeting

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

Motion carried unanimously.

B. February 10, 2022 Management & Planning Session

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

Motion carried unanimously.

X. PUBLIC HEARINGS

A. Ordinance 22-04; Motorized Micromobility Devices

Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTIONS SECTION 28-19, SECTION 28-82, AND SECTION 28-84 OF CHAPTER 28, "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, TO DEFINE AND REGULATE MOTORIZED MICRO-MOBILITY DEVICES; PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

Mayor Murphy read the title of the ordinance. Town Attorney Herin, Jr. revealed that the advertisement appeared past the date to conduct the hearing. He requested that the matter be continued to March 21, 2022. Vice Mayor Hosafros moved to continue the matter to March 21, 2022; second by Council Member Veach.
Motion carried unanimously.

XI. ADMINISTRATIVE AGENDA

A. Flock Safety License Plate Camera Agreement

Adopt Resolution 22-08 approving an Agreement between the Town and Flock Group, Inc. to provide automatic license plate detection software and hardware to monitor the Town's sidewalks, shared use paths, streets, and roads in an amount not to exceed \$15,000 annually, with a one-time implementation fee of \$1,500.

Mayor Murphy read the title of the resolution.

Council Member Allers moved to adopt Resolution 22-08; second by Vice Mayor Hosafros.

Town Attorney Herin, Jr. stated that he would have conversations with Flock to provide language in the agreement to limit litigation risks.

Motion carried unanimously.

B. Resolution 22-07: FDEP Grant Agreement

Adopt Resolution 22-07 re Ratifying the Town Manager's execution of a Grant Agreement between the Town and the Florida Department of Environmental Regulation accepting a \$1 million grant award for the expansion of outdoor recreation facilities as part of the redevelopment of Bay Oaks.

Mayor Murphy read the title of the resolution.

Mayor Murphy moved to adopt the resolution; second by Council Member Veach.

Motion carried unanimously.

C. Resolution 22-06; WCIND Grant Application

Approve Resolution 22-06 authorizing the Town Manager or his designee to submit a grant application to West Coast Inland Navigational District (WCIND) for Law Enforcement Grant Requests for marine patrol and enforcement; and execute the WCIND grant agreement.

Mayor Murphy read the title of the resolution.

Vice Mayor Hosafros moved to approve Resolution 22-06; second by Council Member Allers.

Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt reported that the blue lights between Lani Kai and Crescent Beach would be repaired soon.

He thanked everyone for their patience with installing the new audio/visual system.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. stated that Judge Fuller entered an order in favor of the town regarding short-term rentals and the definition of a month.

In reference to the homes included in the LLC lien mentioned during public comment, Town Attorney Herin, Jr. indicated a settlement agreement had been entered into by both parties but not completed. He stated there was nothing to release until the terms of the settlement were complied with. He noted that the property owner still had not brought the other property into compliance and fines continued to accrue.

Council Member Atterholt questioned whether mediation would be helpful. Town Attorney Herin, Jr. replied negatively and noted that the property owner knew what needed to be done to mitigate the situation. Mayor Murphy questioned whether Town Attorney Herin, Jr. could work out a settlement agreement. Vice Mayor Hosafros reviewed the history of the case and noted they bent over backward for the property owner, but he refused to comply with their requests and conditions. She stated there was nothing to negotiate, mediate or discuss. She added it would be unfair to other property owners who followed the code. Town Attorney Herin, Jr. agreed and added that the town had invested a lot in trying to get the property owner to comply with the code. He did not think that any other mechanism would ensure compliance. He added that they have not received anything from the property owner regarding the agreement except for requests to release the liens.

Town Manager Hernstadt explained that the property owner entered into a contract to sell the homes knowing there were underlying issues. He stated the property owner could come into compliance and request a fine reduction or submit a settlement with the Town Attorney.

Town Attorney Herin, Jr. clarified that if they released the homes from the lien right now, the property owner could sell the homes and use the proceeds to potentially turn around and use that against the town in ongoing litigation.

Town Manager Hernstadt stated the property owner could resolve the issue if he wanted to.

A. PWVL / PAL's Renewal Procedures

Council Member Veach preferred a lottery rather than a first-come, first-serve basis for inactive licenses. Council Member Atterholt brought up negotiations between TPI developers and Margaritaville and their belief they could self-perform. He suggested that they look at language to address promises made to Margaritaville and address this particular license so they could self-perform and move forward. Town Attorney Herin, Jr. replied that he would work on the language.

Council Member Veach explained that they could add a plus one for the current situation and when a license was dropped, that license would expire and the cap would remain. Town Manager Hernstadt did not support a first-come, first-serve basis for vacant licenses. He suggested that Town Council set up a process to review applicants.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers questioned whether they could add a discussion to an M&P agenda concerning language in the code requiring a 20-foot liner for parking garages. Council Member Atterholt agreed, but Mayor Murphy explained why he did not support a discussion. Council Member Veach added his support for a discussion. Council Member Allers stated he was open to reviewing the .15 glass requirement. All members agreed to add it to an M&P. Council Member Allers suggested that staff bring forward costs involved with lighting based on the photometric study. Town Manager Hernstadt explained that pricing changed quickly, but they could provide numbers. He noted that Council had to decide whether they were ready to take responsibility for lighting Estero Blvd. before moving forward. Council Member Veach agreed to move it to an M&P, but Council Member Allers felt they had enough information to make a decision. Council Member Allers suggested a June 1, 2022 deadline to allow FP&L to test the new amber light and then decide based on the results. Council Member Atterholt felt the lighting consultant was obligated to provide options and estimated costs. Mayor Murphy supported another discussion and brought up the history of the core level of services. He stated that if the town was going to take responsibility for Estero Blvd., it should be the town's road. Vice Mayor Hosafros agreed that it was a legitimate discussion. Council Member Veach brought up liability issues with taking over Estero Blvd. Mayor Murphy remarked that it was ludicrous for the town not to own their main street. Council Members continued to discuss details, opinions and suggestions. Town Manager Hernstadt agreed to get the numbers. Vice Mayor Hosafros suggested that they take immediate action if the state allowed them to prevent smoking on the beach. No items from other members.

A. Lee County TDC Seat

Ex-Officio, Non-Voting Seat on TDC

Town Manager Hernstadt explained that Lee County and the TDC created a new ex-officio, non-voting seat to allow each of the municipalities to have a seat on the TDC. Vice Mayor Hosafros stated she would do it but thought it would be good if someone else attended meetings to learn the intricacies of the TDC. Council Member Atterholt offered to serve.

Vice Mayor Hosafros moved to appoint Council Member Atterholt as an ex-officio, non-voting member of the TDC; second by Council Member Veach. Motion carried unanimously.

XVI. ADJOURNMENT

Council Member Allers moved to adjourn the meeting; second by Council Member Veach.

Motion carried unanimously.

The meeting was adjourned at 1:06 p.m.

Minutes adopted, March 21, 2022; Motion by Council Member Veach and seconded by Vice Mayor Hosafros. Adopted 5-0.



Amy Baker, Town Clerk