



Fort Myers Beach Town Council

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

Minutes

Monday, April 4, 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

Town Manager Hernstadt stated that item B. would be continued due to a title change that required a re-advertisement.

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

Motion carried unanimously.

V. PUBLIC COMMENT

Patricia Rittinger, resident of Island Winds, displayed photos of their beach. She noted it was accreting, not eroding. She stated if the plan went forward, the beach would be more than halved. She requested that the town not change its classification.

Lisa Price, property manager and representative of Island Winds, stated that they had approximately 800 feet of beach and it was not eroding. She indicated the beach had been maintained for years with no cost to taxpayers. She requested that their beach not be classified as critically eroding.

Joseph Scheiner, resident of Island Winds, commented that they specifically purchased their property due to the beach. He noted that they intended to hire professionals for a second opinion. He added that the town's consultant stated that their section of the beach was not eroding.

Rick Sabina, resident of Island Winds, continued with Mr. Scheiner's comments and mentioned ponding. He noted it occurred about three months during the year and did not cause concern for anyone. He did not support vegetation being planted along the beach. He felt any change to the beach would have a negative impact. He encouraged Town Council to walk the beach to see the recreational activities. Dave Nusbaum, President of Island Winds condominium, commented that the reclassification was being done under an administrative loophole. He feared that the town would create dunes without the residents' permission. He stated that the beach was not eroding and did not need to be reengineered. He discussed destroying the ecosystem and removing access to recreational activities. He requested that the beach not be reclassified as critically eroding.

Tony DeChristoforo, resident of Ocean Harbor Condominiums, questioned the status of their permit to replace broken lights on their property from hurricane Irma. He stated poles and fixtures were purchased and sitting in the parking lot. He described the new lights and provided a photometric study. He requested that the town issue the permit.

John R. King, representing residents of Island Winds, commented on changing the sea turtle glass ordinance. He reviewed the ordinance and compared it to information on the FWC (Fish & Wildlife Conservation) website. He requested that the tint be changed to 45%.

George Repetti, resident of Island Winds, stated that Mayor Murphy knew the beach as well as anyone. He described improvements made over the years and noted the beach was not critically eroding. He remarked that they did not want more grass or trees on their beach and suggested that they speak to people who knew the area. He commented on the red lights under their building and indicated residents could not see at night.

Jennifer Rusk, resident, discussed the importance of communication and bringing facts to the conversation. She felt there was an overall lack of communication and suggested that Town Council resume discussions about lighting in Times Square and Bayside Park.

Jason Oben, President of Custom Homes, commented on the side setback changes and noted that many of his projects were already underway and under contract. He notified Community Development Director Jason Green concerning the changes. He was told to supply a list of project documentation and the projects would be evaluated on a case-by-case basis. The first project was rejected, and he was told he had to apply for a variance for the remaining projects. He followed up with an email to Council Members and the Mayor. He indicated that his company had been building homes for 38 years, but they were not one of the builders contacted about the changes. He described the harm to property owners and requested that the Town Council retroactively give notice three months from now to protect the property owners.

Mathew Pleskovic, President of Banana Boat Tours & Rides, commented on purchasing his licenses and requested that Chapter 27 not be opened up regarding proposed Ordinance 22-09.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach described his father who passed away over the weekend and thanked people who expressed their thoughts.

Council Member Atterholt described data collection from the TDC (Tourist Development Council) and noted that the Mound House was included in the top three attractions for the first time. He indicated that the Friends of the Mound House were having a fundraiser on Friday, April 8, 2022, at 8:00 at the Mound House and tickets were \$75.00.

Vice Mayor Hosafros thanked Ellen Vaughan and her crew for their work preparing for the fundraiser. She encouraged the community to attend.

Council Member Allers and Mayor Murphy echoed comments regarding the Mound House fundraiser.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

No reports.

VIII. PROCLAMATIONS

A. National Donate Life Month

Mayor Murphy read the proclamation.

IX. APPROVAL OF MINUTES

A. March 21, 2022 Town Council

Council Member Veach noted that on page 8, "4-1 by roll call vote with Council Member Allers dissenting" was added to the minutes in error.

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

Motion carried unanimously.

X. PUBLIC HEARINGS

A. Ordinance 22-08; Election Qualifying Period

Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE QUALIFYING PERIOD FOR TOWN COUNCIL CANDIDATES FOR THE NOVEMBER 2022 ELECTION AND FUTURE ELECTIONS; PROVIDING FOR SCRIVENER'S ERRORS; CONFLICTS OF LAW; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Murphy read the title of the ordinance. Attorney Sanabria noted the hearing was properly advertised. Town Manager Hernstadt reviewed the reason for the request as stated on the blue sheet.

No public comment.

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

Attorney Sanabria noted the qualifying period began on June 13, 2022 and ended on June 17, 2022.

Motion carried unanimously by roll call vote.

B. Ordinance 22-06: Tuckaway Cafe Commercial Planned Development (CPD) Amendment

First Reading and Public Hearing for proposed Ordinance 22-06: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 12-07, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 2301, 2307 & 2311 ESTERO BLVD. AND 111 & 121 MANGO ST., FORT MYERS BEACH; AMENDING THE MASTER CONCEPT PLAN FOR THE RESTAURANT USE(S); PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Open the

first public hearing and schedule for second reading and final adoption on April 18, 2022 at 9:00 AM

Continued to April 18, 2022 at 9:00 a.m.

C. Ordinance 22-05; Building Footprint Limits

First Reading and Public Hearing for proposed Ordinance 22-05: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE III., DIVISION 3, SECTIONS 34-638 "MINIMUM SETBACKS", TABLE 34-3 "DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS", AND TABLE 34-1 "LAND USES ASSIGNED TO USE GROUPS AND SUB-GROUPS" OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE; PROVIDING FOR CODIFICATION, CONFLICTS, SCRIVENER'S ERRORS, SEVERABILITY AND AN EFFECTIVE DATE **Open the first public hearing and schedule for second reading and final adoption on April 18, 2022 at 9:00 AM**

Mayor Murphy read the title of the ordinance.

Community Development Planner Sarah Propst utilized PowerPoint for her presentation. She evaluated several communities' approaches to limiting house square footage and found that Gunnison County, CO made the most sense to her. She displayed slides with a proposed solution, Information Since the LPA Meeting and Questions & Answers about the Proposed Change.

Council Member Atterholt questioned how many properties would be impacted by the change. Planner Propst replied that it was a minimal number.

Council Member Allers brought up the setback changes mentioned by the home builder during public comment. Town Manager Hernstadt replied that Ordinance 22-05 had nothing to do with setback changes and explained the variance process. He indicated the threshold was when the trusses were ordered, engineered and designed. He commented that extenuating circumstances could be reviewed through a public process.

No public comment.

Vice Mayor Hosafros moved to schedule for second reading and final adoption of Ordinance 22-05 on April 18, 2022, at 9:00 a.m.; second by Council Member Veach.

Motion carried unanimously by roll call vote.

D. Ordinance 22-09; PWVL/PAL

First Reading and Public Hearing for proposed Ordinance 22-09: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 27 "PERSONAL WATERCRAFT AND PARASAILING", SECTION 27-52 "PERSONAL WATERCRAFT VENDOR LICENSE AND PARASAILING ACTIVITY LICENSE APPLICATIONS AND REGULATORY FEES"; SECTION 27-53 "PERSONAL WATERCRAFT VENDOR LICENSE AND PARASAILING ACTIVITY LICENSE RENEWALS" OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, TO PROVIDE A LIMITED EXEMPTION TO THE CAP ON THE NUMBER OF ANNUAL LICENSES; PROVIDING THAT PERSONAL WATERCRAFT VENDOR LICENSES AND PARASAILING ACTIVITY LICENSE THAT ARE NOT ANNUALLY RENEWED OR ARE INACTIVE FOR ONE-YEAR OR MORE SHALL REVERT BACK TO THE TOWN; PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on April 18, 2022 at 9:00 AM

Mayor Murphy read the title of the ordinance. Town Manager Hernstadt noted that Town Attorney Herin, Jr. was attending via Zoom. Council Member Veach also provided language to discuss. Town Attorney Herin, Jr. described the proposed language to recognize developments with CPDs as being exempt from the existing cap, inactive status language and allowing Town Council to set license fees by resolution.

Council Member Veach stated that the language provided by Town Attorney Herin, Jr. was included in his document. He suggested that a land-based site be defined in the ordinance. He explained the term "legal operations" to mean the total number of operations by the original license and qualification by the CBD. To improve safety, he suggested that operators limit the movement of PWVLs launching equipment across the littoral zone (wet sand line). The license cap was the number of operations, not the number of licenses.

He refined the application process to require payment of outstanding fines or violations before licenses could be renewed. Council Member Veach addressed transferring licenses to curb proliferation.

Transferring licenses to a new owner would be allowed if the number of operations was below the cap and the applicant must have written approval from the property owner if they were going to use the license on their property.

Public comment:

Sharon Faircloth, owner of Holiday Water Sports, stated that an approval letter from the property was required on the application. She welcomed Tom Torgerson as a new vendor but did not think it was fair that he did not go through the same process as the rest of the operators. She did not support raising the cap for licenses.

Dave Nusbaum, resident, cautioned that the government should not choose winners and losers by imposing restrictions on transferring licenses.

Jennifer Rusk, resident, felt that many people were unaware of the various laws to protect the island. She stated they had to start with a healthy environment.

Chris Weber, Mid-Island Water Sports, questioned the language transferring licenses.

Public comment closed.

Council Member Allers questioned whether a new owner had to update the license application if the name of the business did not change. Community Services Administrator Daphnie Saunders replied that she had not received new applications to transfer licenses. Town Manager Hernstadt added that transfers should come before staff for review. Town Attorney Herin, Jr. noted that the ordinance could be modified to include repercussions for not updating applications when transferring licenses.

Vice Mayor Hosafros felt that they were trying to fix something that did not need fixing because Mr. Torgerson had more than one option open to him. She was against expanding the cap and questioned the total number of CPDs.

Council Member Atterholt discussed Tom Torgerson's CPD and noted the licensing piece was not addressed at the time, but a commitment was a commitment. He pointed out that this CPD was a unique situation and Council was trying to fix the challenge while minimizing external damage. He supported the language by the Town Attorney and amendments by Council Member Veach.

Vice Mayor Hosafros questioned whether Council Member Atterholt was interested in modifying the language to add one to the cap. Town Attorney Herin, Jr. explained how he drafted the ordinance to apply equally to all potential property owners. He indicated that two of the three CPDs he was aware of were not interested in self-operating. He added that staff might still be reviewing prior CPDs.

Council Member Allers felt they were going down the right path, but some changes needed more discussion.

Council Member Veach moved to move it to a second reading and public hearing on April 18, 2022, at 9:00 a.m.; second by Council Member Atterholt. Motion carried 4-1 by roll call vote with Vice Mayor Hosafros dissenting.

XI. ADMINISTRATIVE AGENDA

A. Royal Auction Group Inc. Piggyback Contract

Authorize the Town Manager to execute a Piggyback contract with Royal Auction Group, Inc's for auctioneering services that was competitively procured by Pinellas County.

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

Motion carried unanimously.

B. Resolution 22-14, Florida Division of Emergency Management

Adopt Resolution 22-14 authorizing the Town Manager or designee to apply for and administer a grant from the Florida Department of Emergency Management Mitigation Bureau in the amount of \$536,513.25 for Residential Intrusion Prevention Drainage on Williams Dr.

Mayor Murphy read the title of the resolution.

Vice Mayor Hosafros moved to adopt Resolution 22-14; second by Council Member Veach.

Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

Jason Oben clarified that his six to eight projects already started would be considered.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt stated that staff would start hurricane planning and the budget process now that season was winding down.

Town Manager Hernstadt described the grants awarded to the town and provided an update concerning Times Square, Bayside Park and Bay Oaks.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. stated a court-ordered mediation was scheduled for later in the month regarding Mr. Rood's lawsuit.

Briefings in the Jamison case were completed. Town Attorney Herin, Jr. was waiting for a determination on whether oral arguments would be conducted or whether the court would rule on the proceedings.

Town Attorney Herin, Jr. indicated all but one of Mr. Persaud's claims were dismissed, but the court did allow him to file an amended complaint. Attorney Sanabria stated that title searches were complete and a memo would be presented at the M&P Session on Thursday.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers questioned when FP&L was scheduled. Town Clerk Baker replied they would be at the April 18, 2022, meeting.

Vice Mayor Hosafros questioned where they were with the tree ordinance. Town Manager Hernstadt replied that language was drafted.

Council Member Veach stated he noticed dozens of bicycles without lights at night. Town Manager Hernstadt responded that staff would contact bike rental companies. Council Member Veach noted that the dune planting was only 15 feet deep and raking the beach did not make it a natural beach. He indicated that motorized parasailing on the beach was illegal.

Mayor Murphy noted that Bay Beach was having a groundbreaking event on Tuesday at 3:00 p.m., the London Bay topping-off celebration was at noon on Thursday and the Mound House fundraiser was on Friday evening.

XVI. ADJOURNMENT

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

Meeting was adjourned at 11:45 a.m.

Minutes adopted as presented, April 18, 2022; Motion by Vice Mayor Hosafros seconded by Council Member Allers. Adopted 5-0.

A handwritten signature in blue ink, appearing to read "Amy Baker".

Amy Baker, Town Clerk