



Fort Myers Beach Town Council

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

Minutes

Monday, August 1, 2022

9:00 AM

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers and Council Member Atterholt.

Excused: 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 Atterholt.

Motion carried unanimously.

V. PUBLIC COMMENT

Thomas Houghton, owner of La Ola Surfside Restaurant, urged Council Members to reconsider their stance regarding community policing. He described the activities of homeless people at the Times Square Trolley stop. He indicated that last weekend homeless people verbally harassed a group of summer campers. The campers discussed calling law enforcement, but it was difficult for law enforcement to respond fast enough. He noted that people did not feel safe anymore.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Atterholt described the Fort Myers Beach Fire Control District's promotion ceremony on June 11, 2022. He noted that Fire Chief Ron Martin requested that members being honored recite their oath of office facing the audience, the people that they serve. Council Member Atterholt commended the department, fire board, chief and newly promoted officers for the beautiful ceremony.

Council Member Allers recognized the fire department for their hard work.

No items from other members.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

- A. Cultural & Environmental Learning Center Advisory Board (CELCAB) Vice Chair Cherie Smith reported that the Mound House was open five days a week, from Tuesdays to Saturdays, from 9:00 a.m. to 4:00 p.m. She indicated that CELCAB voted to name the loop around the Mound House "Dan and Ann Hughes Loop" and noted that CELCAB was creating a policy for naming rights of non-historical areas around the Mound House property. CELCAB requested that the admission cost for residents remain at \$5.00 and described Director Giesen's work to obtain accreditation from the American Alliance of Museums. The lecture series was every second Tuesday of the month at 6:00 p.m. She described the upcoming trip to Mexico with Penny Jarrett and stated that the Artful Intersection fundraiser would be held in April, with details to follow.

VIII. APPROVAL OF MINUTES

- A. June 6, 2022 Town Council

Correction: Vice Mayor Hosafros did not agree with allowing a box blade on the beach because ~~Sandpiper Village raked over other people's property.~~ the adjacent condos were raking over the Sandpiper Village beach access. Council Member Atterholt moved to approve the amended minutes; second by Vice Mayor Hosafros.

Motion carried unanimously.

- B. June 9, 2022 Management & Planning

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

Motion carried unanimously.

IX. PUBLIC HEARINGS**A. Ordinance 22-11; Sea Turtle Conservation**

Second reading and public hearing on proposed Ordinance 22-11 entitled: 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” TO PROVIDE FOR A TINTED GLASS OPACITY REQUIREMENT FOR ALL NEW CONSTRUCTION AND ALL RENOVATIONS, RETROFITTING OR WINDOW REPLACEMENTS TO EXISTING BUILDINGS TO REDUCE THE INSIDE TO OUTSIDE LIGHT TRANSMITTANCE VALUE, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Mayor Murphy stated that Council Member Veach requested the hearing be postponed until he returned because he had an amendment to propose. Vice Mayor Hosafros supported the request to postpone. Council Member Atterholt noted that normally he would support the request, but the condominium owners were trying to make decisions regarding windows and faced a time crunch. Council Member Allers agreed with Council Member Atterholt. He also stated that normally he would wait for Council Member Veach, but the cost of the windows continued to increase and he preferred to move forward. Mayor Murphy chose to wait for Council Member Veach to return. Town Attorney Herin, Jr. stated that a 2-2 vote meant the hearing would continue.

Council Member Atterholt moved to continue the hearing to August 15, 2022, at 9:00 a.m.; second by Mayor Murphy.

Motion carried, 3-1, with Council Member Allers dissenting.

B. VAR20220031; 177 Hercules Dr.

Consider VAR20220031 for 177 Hercules Dr. allowing two variances for setbacks for a new garage and porch.

Mayor Murphy read the title of the variance. Town Attorney Herin, Jr. swore in those providing testimony. Ex parte communications: all Council Members received several emails and all but Mayor Murphy drove by the property.

Community Development Director Jason Green stated the applicant initially requested four variances, but the applicant reduced their request to two variances after the LPA (Local Planning Agency) meeting. His presentation included photos of the existing site, Buildable Area; Proposed Site Plan; Proposed Waterfront Elevation; Rear Setback and Allow for Additional Length of Front Porch. Director Green indicated that conditions were included in the packet of information. He noted that staff recommended denial based on LDC (Land Development Code) Sec. 34-87.

He added that the applicant did not submit a building permit application when the code changed. Director Green explained that breaking up the porch facade would not be allowed by code. Council Member Atterholt questioned who owned the property with the picnic table and pier at the end of Hercules Dr. Town Manager Hernstadt replied that the property was a dedicated, improved right-of-way. He described the property's history and noted it was a public facility.

Applicant Cynthia Shanosky distributed her presentation and described the history of their property. She stated they wanted to save the old oak trees and keep the view corridors open for the neighbors and visitors. She indicated they had designed a smaller house on a large lot as far away from the water as possible. Ms. Shanosky stated that they were utilizing only 27% of their lot. She described the content of the LPA meeting and how they came up with the current site plan to accommodate the ordinance. She suggested an amendment to the ordinance to prevent the construction of 65-foot cubes.

Ms. Shanosky's presentation included an aerial of the current condition; Our yellow cottage; lot with allowable buildable footprint; what they proposed; allowed versus proposed; view of the front of the home proposed to the LPA; rendering after the LPA meeting; view without the front porch; Comprehensive Plan illustration; findings and conclusions Parts A, B, C, D and E; depiction of the future design of their three lots and quotes from supporters. She encouraged the Council to attach a combined site plan as a condition of approval and noted that they intended to use the property as a family compound.

Council Member Allers clarified the garage dimensions and preferred that the house stay further away from the water.

Town Attorney Herin, Jr. stated that it was the applicant's obligation to demonstrate that they met the criteria in the code to grant the variance and that the single lot was the subject of the appeal. Whatever happened to the other two lots was not relevant to their decision and statements from supporters could not be considered. He indicated that condition 4 would have to be changed to reflect the single lot.

Vice Mayor Hosafros clarified that the code did not prohibit the applicant from enclosing the area underneath the porch. Director Green noted a condition could be added.

Town Attorney Herin, Jr. reminded Council that the applicant had to comply with current regulations or meet the criteria to be entitled to a variance.

Ms. Shanosky stated the neighbor was fine with the garage five feet off his property line because the house was 20 feet off the property line and the view corridor was protected.

Director Green discussed the life of the trees during construction and noted the root structure was generally equal to the branches.

No public comment.

Council Member Allers noted he struggled with the porch size because it could be designed to allow a 35-foot porch. He did not have an issue with a variance for the garage.

Vice Mayor Hosafros noted the arguments for granting the variances were not guaranteed. The trees could die during construction and the view under the garage was not guaranteed. She did not find anything extraordinary about the property because it seemed there was plenty of room to build pursuant to the code.

Council Member Allers moved to approve the variance for the garage setback but deny the variance for the additional 13 feet for the porch, include the conditions of approval set forth by the town staff and, in regard to condition number 4, remove the other properties; second by Mayor Murphy. Mayor Murphy felt the porch added a lot to the house. He would regrettably support the motion but preferred that both be approved.

Votes taken by roll call resulted in a tie. Mayor Murphy and Council Member Allers voted to approve, with Vice Mayor Hosafros and Council Member Atterholt dissenting. Town Attorney Herin, Jr. stated that the applicant could reapply in six months.

Council Member Allers moved to reopen the public hearing to hear from the applicant; second by Mayor Murphy.

Motion carried unanimously.

Ms. Shanosky stated that she hired an arborist to help protect the trees and reiterated that she loved the open corridors. She indicated that this was her last shot. Mr. Kevin Shanosky was sworn in. He assured the Council that Ms. Shanosky did not have nefarious intentions. He questioned the reason behind the two dissenting votes. Vice Mayor Hosafros stated that the variances did not rise to the level necessary under the findings on page 80. Council Member Allers questioned whether the applicant would move forward with a 35-foot porch.

Council Member Allers requested they reopen the public hearing and Mayor Murphy agreed.

Ms. Shanosky stated that she would have to discuss the 35-foot porch with her husband, but she would consider it. She did not know why she was not granted administrative relief since they were so far along with the design.

Mayor Murphy questioned whether there was an option for an expedited process if the applicant were to come back. Town Attorney Herin, Jr. noted the applicant could ask for a continuance for two weeks. Council Member Allers questioned whether the applicant would have to come back in if Council voted to approve the variance for the garage and the applicant decided to build the 35-foot porch allowed under the code. Town Attorney Herin, Jr. replied that the 35-foot porch did not require a variance, so the applicants could move forward. Director Green stated that the variances were individual applications, and both needed to be voted on.

Council Member Allers moved to approve the variance for the garage with the applicable staff conditions; second by Mayor Murphy.

The vote resulted in a tie, with Vice Mayor Hosafros and Council Member Atterholt dissenting. Mayor Murphy and Council Member Allers voted in favor of the motion.

Council Member Atterholt noted if they continued the matter, Council Member Veach could weigh in. He agreed with Vice Mayor Hosafros and had additional concerns, but he was open to a continuance. Vice Mayor Hosafros disagreed. She voted for a continuance at the previous hearing because Council Member Veach specifically asked that it be continued. Town Attorney Herin, Jr. stated that Robert's Rule of Order allowed them to table the matter until a date and time certain or indefinitely until it was taken off the table where it could be considered at that time.

Mayor Murphy moved to postpone the item until August 15, 2022, at 9:00 a.m.; second by Council Member Allers.

Town Attorney Herin, Jr. stated that if the matter came back, they would have to go over the entire hearing again because Council Member Veach was not in attendance. Council Member Veach could review the meeting, but the decision had to reflect the evidence and testimony that the entire body voting on it had heard on the date it was being considered and voted on.

Motion carried 3-1, with Vice Mayor Hosafros dissenting.

X. ADMINISTRATIVE AGENDA

A. Barefoot Rugby Tournament - Special Event

Permission to hold the Barefoot Rugby Tournament on August 6, 2022 form 9am to 5 pm.

Council Member Allers moved to give approval; second by Council Member Atterholt.

Motion carried unanimously.

B. Public Safety Committee Appointments

Appointments to the Public Safety Committee (PSC)

Town Manager Hernstadt noted that one person applied to the Historic Preservation Advisory Committee and another to the Local Planning Agency. Both items will be on the next agenda. Mayor Murphy requested that applicants attend the meeting to answer questions.

Mayor Murphy indicated there were three applicants for two vacancies and Mr. Daniel Blanchette was the only applicant in attendance. Mr. Keran Farrell lived off the island and Mr. James Bougoulas was building a home on the island.

Mr. Blanchette introduced himself and stated he and his wife had recently attended the Citizen's Academy course. Since he retired, he was interested in joining the PSC. He previously worked for 41 years in the IT department at Liberty Mutual.

Vice Mayor Hosafros moved to approve Daniel Blanchette for the PSC; second by Council Member Atterholt.

Motion carried unanimously.

Vice Mayor Hosafros moved to approve James Bougoulas for the PSC; second by Council Member Atterholt.

Motion carried unanimously.

XI. FINAL PUBLIC COMMENT

No public comment.

XII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt stated that Mr. Blanchette and his family did a magnificent job remodeling their cottage.

Town Manager Hernstadt indicated that revenue (estimated at \$250,000.00) from the new parking lot came with the caveat that residential parking passes would not be accepted on that lot. If Council wanted to open the parking lot to residents, the revenue projection would have to be adjusted. The proposed fee schedule for the Mound House will be on the agenda for Thursday's meeting. He thanked Town Council for their support over the summer.

Town Manager Hernstadt indicated they were on schedule for a mid-month ground-breaking for a completion ceremony for Bayside Park, the opening of the entrance lot for Bay Oaks should be in September and he expected to present finalized pricing for the Bay Oaks project in the fall, with construction starting before the end of the calendar year. He noted they expected to open Bay Oaks by this time next year. The staff was in the process of rebidding material for streets with stormwater improvements.

Council Member Atterholt questioned whether Town Manager Hernstadt had an update on the light fixture that FPL was testing. Town Manager Hernstadt replied that the corrosion tests were still underway and expected to hear results in October. He added that he was informed of the testing status by an FPL representative and would contact FPL again before budget discussions.

XIII. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. stated that Attorney Sanabria would attend the M&P session on Thursday.

Town Attorney Herin, Jr. was moving forward with filing two lawsuits regarding code enforcement liens and would keep Council informed of the progress. He described the two properties and added that those were the ones with the largest fines. He explained why the other lawsuits would be filed in sequence.

XIV. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Hosafros received support for adding amenities to the new beach access across the street from Albatross.

Council Member Atterholt questioned whether the Town Manager had an update on Times Square. Town Manager Hernstadt replied that since the legislature did not approve the \$1 million grant, the town was able to reapply from other funds for just less than half of their original request. Once the bid package for Bay Oaks was completed, the town would start the bid package for Times Square. Council Member Atterholt requested data on enforcement metrics regarding lighting violations for the next meeting.

Mayor Murphy clarified that the next agenda would include a vote on the "Dan and Ann Hughes Loop" as recommended by CELCAB.

No items from other members.

XV. ADJOURNMENT

Council Member Allers moved to adjourn; second by Mayor Murphy.

The meeting was adjourned at 11:52 a.m.

Minutes adopted, August 15, 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