



Fort Myers Beach Town Council

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

Minutes**Monday, August 15, 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 move the committee appointments under the Administrative Agenda after Approval of Minutes and add approval of the Ann and Dan Hughes Loop at the Mound House; second by Council Member Veach. Motion carried unanimously.

V. PUBLIC COMMENT

Patrick Vanasse represented the LPA (Local Planning Agency) and indicated the LPA heard several cases regarding variances and side setbacks. The LPA felt there might be unintended consequences with the changes and asked that staff re-examine recent cases and look at how the change from a 7.5 foot side setback to a 15% setback might cause challenges for small or irregular lots. As a member of the little league, he stated that the fields were used every weekend and he was concerned about conversations to get rid of the fields. As a concerned citizen, he questioned whether increased fees at Bay Oaks would go back into their budget. He questioned why the fees were being increased since the budget was in good shape last year.

Mr. Vanasse stated that the LPA had requested a detailed budget two years in a row but only received general numbers for capital expenses. He noted they needed details so they could review the budget.

Sue Volvedich introduced herself as an applicant to join the LPA.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Hosafros recognized Public Works employees for working in the heat and thanked them for their service.

Council Member Veach thanked Council for their consideration in his absence at the last meeting.

No items from other members.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Marine and Environmental Resources Task Force (MERTF) Chair Steve Johnson noted that their tentative budget was \$5,000.00 and asked the Council to consider increasing their budget to \$10,000.00. He described the costs of the pop-up events and the new brochure. He requested that the information from the invasive species project be added to the website. Town Manager Hernstadt revealed the list of properties was already on the website.

A. Bay Oaks Recreational Campus Advisory Board (BORCAB)

BORCAB Member Karen Woodson agreed with Mr. Vanasse's comments regarding BORCAB. Bay Oaks was built for residents and non-residents and a published statement concerning membership was misleading. She reported that over 10,000 visitors used the pool between August 2021 to July 2022 and the Rec Center recorded over 15,000 visits. Over 2,000 people participated in Pickleball and more than 1,000 enjoyed instructor-led classes. She explained that rates had not been changed in 11 years, but the increase was too much at once. BORCAB revised the proposed rates and felt the fees were more realistic.

Council Member Atterholt noted that some insurance plans paid a portion for wellness programs. He questioned whether the town could apply for a special exception to participate in the Silver Sneakers program. BORCAB Member Woodson agreed to look into participation in the programs. Town Manager Hernstadt explained that the increased fees had nothing to do with the new building, but the increases would help cover operating costs. Council Member Atterholt questioned whether the Town Attorney would formally inquire with the federal government why Bay Oaks was denied eligibility for the Silver Sneakers program and if a special exception was available. Town Council supported his request. Town Attorney Herin, Jr. responded that he felt that correspondence should come from the Town Manager and he would assist with research.

Council Member Veach questioned whether BORCAB considered limiting utilization at the old gym to avoid hiring additional staff. BORCAB Member Woodson replied that offices at the old gym would move to the new administrative building and the old gym would house hardcore physical activities like basketball and aerobics.

Town Manager Hernstadt indicated the town was looking to add four positions for the new building in the 4th quarter of FY23 and staff were looking into upgrading access controls to the existing building.

VIII. APPROVAL OF MINUTES

- A. August 1, 2022 Town Council
Vice Mayor Hosafros moved to approve the minutes; second by Council Member Allers.
Motion carried unanimously.
- B. August 4, 2022 Management & Planning Session
Amendment: Mayor Murphy noted the millage rate had never exceeded 1 mill (not 1%).
Vice Mayor Hosafros moved to approve the minutes as amended; second by Council Member Allers.
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 read the title of the ordinance. Council Member Veach proposed an amendment that appropriate blinds be installed before a permit is approved or a certificate of occupancy is granted. Appropriate blinds would have to be sufficient to black out light emissions. Council Member Atterholt questioned whether adopting the amendment would cause a delay in enactment. Town Attorney Herin, Jr. replied negatively.
Public comment:
Eve Haverfield of Turtle Time discussed rolling back the 15% tint. She stated that the FWC (Fish & Wildlife Conservation Commission) was conducting tests regarding window tinting and the results should be available in the fall. She urged the Council to delay making a decision until recommendations

from the state were clarified. She noted that Environmental Project Manager Chadd Chustz made significant improvements by abating exterior and common lighting violations but imploring people to close their drapes was not working.

Cindy Johnson, resident and Turtle Time volunteer, stated that there had been improvement since the beginning of the year, but people still did not consistently close their blinds and curtains. She noted there were seven disorientations so far. She read a letter from Dr. Trindell at the FWC stating that 45% transmittance did not adequately block interior light from the sea turtle nesting beach. She discussed the study and felt the Council should wait for the results before changing the ordinance.

Bill Althoff, resident, supported the decision to replace the .15 glass requirement and encouraged efforts to adopt the statewide guideline of .45. He noted that many property owners supported protecting the endangered turtles and described efforts made to abide by the light rules. He discussed the higher cost of .15 glass and noted that every coastal county required .45 glass.

John R. King, Islands End Condo Association Board of Directors, reviewed the ordinance and the amendment concerning appropriate blinds. He urged Town Council to pass the ordinance.

Mary Rose Spalletta, resident, displayed a yellow sign placed at every turtle nest explaining that federal and state law required the town to protect the turtles. She added that Florida was number one in the world for producing live and healthy sea turtles. She discussed how the lights affected the females and hatchlings. She stated that the town should adopt the strictest rules to protect the turtles.

Jennifer Hatfield represented the fenestration and glazing industry alliance. She urged Council to adopt the changes. She noted they were collaborating with FWC on testing to determine an appropriate range. She discussed the tints and supported the 45% glass.

Public comment closed.

Council Member Allers moved to approve Ordinance 22-11 as written and not to include Council Member Veach's amendment, no second.

Council Member Veach moved to amend Ordinance 22-11 to include a provision that the appropriate blinds had to be installed before a CO or a permit was approved; second by Vice Mayor Hosafros.

Council Member Allers felt the town should not be in the interior design business. He did not think it was the government's job to approve someone's blinds. Council Member Veach stated that the government was not designing the blinds; they just had to effectively block the light. Council Member Allers discussed inspecting the interior of homes and questioned how far they wanted to go. Council Member Veach replied that blinds were a logical part of installing windows. Council Member Atterholt felt that requiring blinds was a reasonable compromise. Council Member Allers questioned who on staff was certified to be an inspector.

Vice Mayor Hosafros noted the inspectors were contracted. Council Member Allers did not think it was fair to the homeowners to require Council to sign off on a blind. Council Member Veach felt that blinds with 80% or more opacity with 45% glass would be a satisfactory number for a blind. Vice Mayor Hosafros pointed out that two condo associations threatened to sue the town over increased enforcement. Town Attorney Herin, Jr. replied that the threats had been resolved. Town Manager Hernstadt clarified that the process had been resolved, but common area violations would still apply. Council Member Atterholt relayed his condo association's response to a warning received last year and stated that property owners responded positively. He discussed the ability to add tinting to windows in high-turnover properties. Mayor Murphy asked Council Member Veach to restate his motion with a bare minimum requirement for blinds. Council Member Veach stated that any window replacement or installation would not be considered complete unless blinds were installed to block 80% of the light. Council Member Atterholt thought the amendment only affected new construction.

Council Member Veach responded that it would also affect replacement windows and noted that requiring blinds would be part of the window inspection process.

Town Attorney Herin, Jr. stated that the ordinance had language that required all renovations, as well as new construction, to submit a lighting plan to confirm compliance with the ordinance. He recommended adding "blinds/shades" to subsections f. and k. under Sec. 32-105. Town Manager Hernstadt discussed how staff reviewed the lighting plan and indicated that staff did not look at interior plans. Project Manager Chustz commented that the lack of blinds was a problem with new construction, but not necessarily replacement windows. Council Member Veach restated his previous motion.

Council Member Veach moved that window coverings must be installed with any new or replacement windows before approval of the inspection for a CO (Certificate of Occupancy) or closing the permit, second by Vice Mayor Hosafros.

Motion carried 3-2 by roll call vote with Council Members Allers and Veach dissenting.

Council Member Allers commented that he voted no because he did not believe the amendment should be added. Council Member Veach stated that he thought it was still wrong and communication, enforcement and education were not working.

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 Clerk Baker stated that the applicants withdrew their applications.

X. ADMINISTRATIVE AGENDA**A. Stabilization of Archaeological Resources at Mound House.**

Approve a capital project from the general fund in the amount of \$43,967.28 for the Florida Museum of Natural History to provide archaeological services for the stabilization of the underground museum "Stories Beneath Our Feet" exhibit at Mound House.

Vice Mayor Hosafros moved to approve; second by Council Member Allers. Director of Culture, Parks & Recreation Alison Giesen noted that the underground museum continued to move and this project was the first of two steps to preserve the archeological resource.

Motion carried unanimously.

B. FY23 Contractual Agreements

Approve purchase orders/contracts in excess of \$25,000 for FY2023 in the areas of Environmental Services, Planning/Zoning, Building Services, and Community Development Administration, together with such changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, and authorize the Town Manager to execute the Agreements on behalf of the Town.

Council Member Veach moved to approve; second by Vice Mayor Hosafros. Town Manager Hernstadt explained that building permits were taking longer than usual to process due to an influx of applications. He added that staff were working overtime and on weekends to process applications.

Motion carried unanimously.

C. Supplemental Magistrate**Supplemental Magistrate**

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

Council Member Allers commented that the budget would not be affected. Patrick Neal introduced himself.

Motion carried unanimously.

D. 2022 Canvassing Board

Appoint a member of the Town Council to serve on the canvassing board for the Town of Fort Myers Beach November 8, 2022 general election.

Vice Mayor Hosafros volunteered to serve on the canvassing board.

E. Local Planning Agency Appointment**Appointment to the Local Planning Agency (LPA)**

Doug Eckmann introduced himself and reviewed his experience. Vice Mayor Hosafros stated that Mr. Eckmann was a valuable member of the Anchorage Advisory Committee.

Don Sudduth introduced himself and described his experience.

Joe Kirkbride described his background and noted his interest in the island's future.

Doug Eckmann received the votes for appointment to the LPA.

F. Historic Preservation Advisory Board Appointment**Appointment to the Historic Preservation Advisory Board (HPAC)**

Vice Mayor Hosafros moved to appoint Michael Yost to the HPAC; second by Council Member Allers.

Motion carried unanimously.

XI. FINAL PUBLIC COMMENT

No public comment.

XII. TOWN MANAGER'S ITEMSA. Landscape Maintenance**Landscape Maintenance for the foot of Matanzas Pass Bridge with Florida Department of Transportation (FDOT) proposed improvements.**

Town Manager Hernstadt commented that Lee County's proposed agreement was in their packet. The agreement indicated that the town assumed all liability. His position was that the FDOT could contract with the town as long as the town did not assume liability, or the town could pay Lee County to maintain the landscape if an agreement with TPI was not feasible. Council Member Atterholt supported the town covering the cost of maintaining the vegetation if a deal could not be reached with Margaritaville. Council Member Veach did not support the town taking liability for something they did not own or design.

Council Member Allers felt it was important to find out what Lee County was willing to do. Vice Mayor Hosafros was told that Lee County would not enter into an agreement with TPI. Council Member Veach remarked that the town could pay for the maintenance, but the question was who assumed liability. Council Member Atterholt felt that Lee County should assume liability for their road and he did not mind having the town pay for maintenance. Town Manager Hernstadt will contact Lee County administration.

B. Lee County Multi-Jurisdictional Program for Public Information 2021 Annual Evaluation**Annually, the Program for Public Information (PPI) is reviewed to evaluate the unified messages delivered to affected residents and businesses and the actions taken to reduce danger and property damage caused by flooding.**

Town Manager Hernstadt explained that the effort would accumulate points for the community rating system. Flood Plain Coordinator Kristin Schumacher provided the annual report from 2021 for Council to review. Consensus was reached to continue to participate in the program.

Town Manager Hernstadt referred to previous comments and clarified that the LPA was asked to comment on the capital improvement program, which involved projects, location and timing to meet the goals of the comp plan. He noted that the LPA still had 20 business days to discuss the budget.

He brought up the review of side setbacks and stated staff would review the topic if Council directed them. Town Manager Hernstadt added that the town had no plans to eliminate the ball fields at Bay Oaks.

XIII. TOWN ATTORNEY'S ITEMS

No items.

XIV. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Hosafros suggested that Advisory Committee Items and Reports be modified to include Appointments so applicants did not have to stay for the whole meeting. The agenda item would be adjusted to read, "Advisory Committee Items, Reports and Appointments." She received consensus to modify the agenda.

Council Member Allers stated that asbestos siding was still on the property next to the Beach Bar and the drainage went directly into his building. The owner indicated that he did not receive any response from the town. Town Manager Hernstadt will meet with Council Member Allers after the meeting.

Mayor Murphy questioned whether they could vote on approving the Ann and Dan Hughes Loop sign today. Consensus was reached to direct the Town Manager to order the sign and they would ratify the resolution at the next meeting. Mayor Murphy described the Florida League of Cities convention and he recommended that Council members attend the next one.

No items from other members.

XV. ADJOURNMENT

Council Member Allers moved to adjourn; second by Council Member Veatch.

Motion carried unanimously.

The meeting was adjourned at 11:55 a.m.

Minutes adopted, September 8, 2022; Motion by Council Member Allers, seconded by Vice Mayor Hosafros. Adopted 5-0.



Amy Baker, Town Clerk