

Town of Melbourne Beach

REGULAR TOWN COMMISSION MEETING FEBRUARY 15, 2023 at 6:00 p.m. COMMUNITY CENTER – 509 OCEAN AVENUE

MINUTES

Commission Members:

Mayor Wyatt Hoover
Vice Mayor Joyce Barton
Commissioner Sherri Quarrie
Commissioner Corey Runte
Commissioner Marivi Walker

Staff Members:

Town Manager Elizabeth Mascaro
Town Attorney Cliff Repperger
Finance Manager Jennifer Kerr
Building Official Robert Bitgood
Fire Chief Gavin Brown
Police Chief Melanie Griswold
Public Works Director Tom Davis
Town Clerk Amber Brown

1. Call to Order

Mayor Wyatt Hoover called the meeting to order at 6:00 p.m.

2. Roll Call

Town Clerk Amber Brown conducted a roll call

Commission Members Present

Mayor Wyatt Hoover
Vice Mayor Joyce Barton
Commissioner Sherri Quarrie
Commissioner Corey Runte
Commissioner Marivi Walker

Staff Members Present

Town Manager Elizabeth Mascaro
Town Attorney Clifford Repperger
Building Official Robert Bitgood
Public Works Foreman Sean Hasner
Public Works Director Tom Davis
Town Clerk Amber Brown

Commission Members Absent

3. Pledge of Allegiance and Moment of Silence

Mayor Wyatt Hoover led the Pledge of Allegiance

4. Public Comments

After being acknowledged by the Mayor, members of the public should state their name and address for the record. The Commission encourages citizens to prepare their comments in advance. Each individual will have three (3) minutes to address the Commission on any topic(s) related to Town business, not on the Agenda.

Yabsira Adera US Small Business Administration

Yabsira Adera spoke about disaster assistance for individuals that have been impacted by Hurricane Nicole. The US Small Business Administration provides low-interest loans.

Amy Rickman 303 Sunset

Amy Rickman spoke about the preservation, conservation, and improvement of the sea dunes at First Ave. Amy Rickman spoke about being part of DAR and they volunteered to maintain the First Ave beach crossover. Amy asked to place a DAR sign at the First Ave beach crossover.

Mayor Wyatt Hoover spoke about not being able to vote on it tonight, but it would be added as an agenda item next month.

Crystal Cain
309 Surf Rd

Crystal Cain spoke about the Adopt an Area program. The EAB had 50 volunteers last weekend to plant sea oats. March 11th at Old Town Hall there will be a native plant sale and oak tree giveaway from 11-3 pm. Spoke about updates and plans for Old Town Hall.

Ali Dennington
413 Surf Rd

Ali Dennington spoke about objecting to the entire meeting because she sent in a public records request on February 6, 2023, for any records related to the meeting that was canceled on February 1, 2023, and she has not received anything yet. The packet was sent to the Commission last Friday, why wasn't it posted online then?

Town Clerk Amber Brown spoke about the agenda and agenda packet being posted on the website and the Town bulletin boards on Friday, February 10, 2023, the same day they were sent to the Commission. Also, the deadline to submit items for the meeting is Thursday, February 9, 2023, so she wouldn't have had all of the documents before that.

5. Approval of the Agenda

Vice Mayor Joyce Barton made a motion to approve the agenda as presented; Commissioner Marivi Walker seconded; Motion carried 5-0.

6. Consent Agenda

- A. Approval of the Regular Town Commission Meeting Minutes January 18, 2023
- B. Approval of the site plan for 921 Oak St – Two-car attached garage
- C. Approval of the site plan for 419 Riverview Ln – Room addition
- D. Approval of the site plan for 404 Colony St – Porch addition
- E. Appointment and reappointment of Board Members
 - Reappointment to the History Center Board
 - 1. Steven Doles
 - Appointment to the Police Pension Fund Board of Trustees
 - 1. Robin Petersen

Vice Mayor Joyce Barton moved to approve the Consent Agenda as presented; Commissioner Marivi Walker seconded; Motion carried 5-0.

7. Public Hearing

- A. Proposed Ordinance 2023-01 – Landscaping and Trees Section 9A

Mayor Wyatt Hoover spoke about the background information about this proposed ordinance.

Town Attorney Clifford Repperger - first reading of Ordinance 2023-01

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, AMENDING; APPENDIX "A" OF THE TOWN CODE OF ORDINANCES OF MELBOURNE BEACH, THE LAND DEVELOPMENT CODE; AMENDING CHAPTER 9A REGARDING LANDSCAPING AND TREES; SPECIFICALLY AMENDING SECTION 9A-4, PERMIT REQUIRED FOR CUTTING DOWN TREE; SPECIFICALLY AMENDING AND RENAMING SECTION 9A-5, APPLICATION FOR PERMIT; REVIEW OF APPLICATION; MINIMUM CONSTRUCTION STANDARDS; SPECIFICALLY AMENDING SECTION 9A-6, ON-SITE INSPECTION; SPECIFICALLY AMENDING SECTION 9A-7, MINIMUM TREE PLANTINGS; SPECIFICALLY AMENDING SECTION 9A-10, EXCEPTIONS; SPECIFICALLY AMENDING SECTION 9A-12, PENALTY; AMENDING ARTICLE IV, CHAPTER 7A, SUPPLEMENTARY DISTRICT REGULATIONS; SPECIFICALLY AMENDING SECTION 7A-53, FENCES AND WALLS; SPECIFICALLY AMENDING SECTION 7A-58, VISION CLEARANCE AT CORNERS; PROVIDING A SEVERABILITY/INTERPRETATION CLAUSE; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

Town Attorney Clifford Repperger spoke about the amendments to the ordinance which include the following.

- Amends Section 9A-4 to require permitting, removal standards, and exempt trees posing an unacceptable risk in accordance with Florida Law.
- Amends Section 9A-5 regarding the number of tree removal plans required.
- Amends Section 9A-6 to provide dimensions for replacement trees.
- Amends Section 9A-7 to revise minimum tree plantings for new construction.
- Amends Section 9A-10 to provide for clarified exemptions in accordance with State Law.
- Amends Section 9A-12 to provide for enhanced penalties for mature tree removal without a permit.
- Amends Section 7A-53 to allow for fences/walls extending beyond the front building line on residential lots abutting A1A and Oak Street south of Ocean Avenue to be erected to a maximum height of six (6) feet with required plantings and corner lot limitations.
- Amends Section 7A-53 to clarify references to fences and walls.
- Amends Section 7A-58 to clarify references to fences and walls.

Town Attorney Clifford Repperger spoke about the Planning and Zoning Board not being ready to provide a recommendation and tabled it until their March meeting. At the Planning and Zoning Board meeting, they had concerns regarding the two-for-one tree replacement for new construction which has since been amended to a one-to-one requirement, another section was related to the fines for removing a tree without a permit being too steep. The ordinance mirrors what State Statute has regarding fines.

Mayor Wyatt Hoover spoke about a couple of corrections.

Vice Mayor Joyce Barton asked if the \$5,000.00 fine is per tree.

Town Attorney Clifford Repperger spoke about the fine is up to \$5,000.00 per tree.

Commissioner Corey Runte spoke about any fines that are collected from this being put into a separate fund for beautification.

Commissioner Sherri Quarrie asked about the process in section 9A-4 permit required for cutting down a tree.

Further discussion ensued

Commissioner Corey Runte spoke about three scenarios that would not require a permit which are unsafe conditions, unhealthy trees, and invasive trees.

Building Official Robert Bitgood spoke about a permit not being required for trees that pose an unacceptable risk.

Jim Simmons
409 Avenue B

Jim Simmons spoke about the last sentence in section 94-A should be changed to say any tree which poses an unacceptable risk may qualify for removal without a Town permit. Don't tell them they can, tell them they may qualify. 9A-6b1a who determines if it unreasonably restricts. 9A-7c who determines similar species. The last thing regarding fences is to make sure when gates are put in that there is enough space to get off the road while the gate opens.

Mayor Wyatt Hoover spoke about changing 94-A to reverse the sentence structure to say a tree that poses an unacceptable risk may qualify. Regarding 9A-6b1A how can unreasonably restricts be changed so it is not so subjective

Vice Mayor Joyce Barton spoke about section 9A-6b1A removing unreasonably restricts.

Town Attorney Clifford Repperger spoke about reworking that language.

Commissioner Corey Runte spoke about adding a section that states if the removal of any tree or shrub causes the number of remaining trees and shrubs to fall below the minimum number required a replacement tree or shrub shall be planted within thirty days of removal to section 9A-6.

Commissioner Sherri Quarrie spoke about being okay with the Florida Statute fines in 9A-12 to allow the Special Magistrate the ability to determine the fine amount.

Mayor Wyatt Hoover spoke about double-checking to make sure the Code has a section that requires gates to be set back to allow vehicles to get off A1A.

Further discussion ensued

Dan Harper
418 Avenue B

Dan Harper spoke about several reasons why 9A-7c should not be included. Doubling tree density is not practical. Maintaining the same density pre and post-construction is reasonable. Tree density should be defined in the definitions. The \$5,000.00 fine is excessive.

Town Attorney Clifford Repperger spoke about the doubling tree density concern is related to the proposed ordinance when it went to the Planning and Zoning Board but was amended before it came to the Town Commission. Will look into the definition of tree density to see if that needs to be included

Ali Dennington
413 Surf Rd

Ali Dennington spoke about objecting because she has not had enough time, she made public records requests and Amber has had the records, Amber's lying, what Amber said is not true. The notice for this meeting for these ordinances is defective. There was ex parte communication that was not disclosed. The Planning and Zoning Board has not recommended this yet. Where is the report with the findings that this is in compliance with the comprehensive plan. There was mention of an agenda report; what's that and where is it. This is horrible who wrote it. Does not oppose it in theory, but rushing it through like this is so bad.

Town Attorney Clifford Repperger spoke about the ordinance's full title was advertised in Florida Today for the Planning and Zoning Board and has been out for weeks and available to the public for that meeting last week. The first reading is not required to be noticed, but we over notice by doing a first public notice for planning and Zoning and the Commission meeting and then we will do a second notice for planning and Zoning and the Commission meeting in the newspaper. As far as the ex parte communication, this is not a quasi-judicial proceeding. This is a legislative proceeding and you are free to talk to whomever you want to.

Vice Mayor Joyce Barton moved to pass the first reading of Ordinance 2023-01 Landscaping and Trees Section 9A with the points discussed; Commissioner Corey Runte seconded; Motion carried 5-0.

B. Proposed Ordinance 2023-02 – Second Kitchens

Town Attorney Clifford Repperger – first reading of Ordinance 2023-02
AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, AMENDING; APPENDIX "A" OF THE TOWN CODE OF ORDINANCES OF MELBOURNE BEACH, THE LAND DEVELOPMENT CODE; AMENDING SECTION 1A-3 TO ADD THE DEFINITION FOR KITCHEN OR KITCHEN FACILITY; AMENDING CHAPTER 7A REGARDING SECOND KITCHENS; SPECIFICALLY AMENDING SECTION 7A-31, SECTION 7A-32, AND SECTION 7A-33 TO PERMIT SECOND KITCHENS IN 1-RS, 2-RS, AND 3-RS ZONING DISTRICTS; CREATING SECTION 7A-72 TO PROVIDE

SUPPLEMENTARY DISTRICT REGULATIONS FOR SECOND KITCHENS IN SINGLE FAMILY RESIDENTIAL DISTRICTS; PROVIDING A SEVERABILITY/INTERPRETATION CLAUSE; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

Town Attorney Clifford Repperger spoke about the amendments to the ordinance which include the following.

- Amends Section 1A-3 to add a definition for “kitchen” or “kitchen Facility” which excludes outdoor barbeque areas without a range or stove.
- Amends Section 7A-31 to cite appropriate supplementary regulations.
- Amends Section 7A-32 to cite appropriate supplementary regulations.
- Amends Section 7A-33 to cite appropriate supplementary regulations.
- Creates Section 7A-72 to allow for second kitchens in 1-RS, 2-RS, and 3-RS zoning districts with permitting and regulatory conditions.

Town Attorney Clifford Repperger spoke about this ordinance going to Planning and Zoning which they recommended by a 4-1 vote. Since the Planning and Zoning meeting there has been an amendment to 7A-72(1) to read the second kitchen facility and the area or quarters it serves shall be integrated architecturally into the principal single-family dwelling unit or may be located within separate quarters connected to the principal single-family dwelling unit by a common wall or common roof. For purposes of this Section, a breezeway connected between the principal single-family dwelling unit structure and the separate quarters served by the second kitchen may constitute a common roof. Access to the second kitchen shall be as required by the Florida Building Code.

Mayor Wyatt Hoover spoke about the history of and discussions regarding this ordinance change.

Commissioner Sherri Quarrie spoke about not being in favor of allowing second kitchens in detached accessory structures, so she likes the rewrite to Section 7A-72(1)

Mayor Wyatt Hoover spoke about not wanting to explore allowing kitchens in detached structures so he is happy with this ordinance.

Commissioner Corey Runte, Commissioner Marivi Walker, and Commissioner Sherri Quarrie agreed.

Dan Harper
418 Avenue B

Dan Harper spoke about section 7A-72(1) which allows for an internal and external entrance. Asked to get opinion letters from Town Council and Town Planner that allowing the exterior access would not turn it into multifamily.

Town Attorney Clifford Repperger spoke about Mr. Harper's feedback is about the previous revision of the ordinance. The language of the newest revision does not have the language related to the external entrance. Town Attorney Clifford Repperger did speak with the Town Planner Corey O'Gorman who did not feel that the allowance of a restricted separate guest cottage would convert a property from a single-family use as it is zoned to multifamily because of the restrictions such as size and location. We are not proposing detached only attached separate quarters, so there is no concern about it becoming multifamily.

Vice Mayor Joyce Barton asked if the guest cottage would still need to be attached by a roof line.

Town Attorney Clifford Repperger spoke about currently you can have separate living quarters that are attached by a roof line or common wall you just cannot have a second kitchen. This section would allow you to have a second kitchen, but you would still have to maintain the attached roof line or common wall. The other consideration related to the multifamily concern is that you would still be required to have and maintain the homestead exemption on it.

Vice Mayor Joyce Barton thought it would be a good idea to get a memo from Corey O'Gorman.

Jim Simmons
409 Avenue B

Jim Simmons spoke about the County is supposed to be looking at and monitoring properties that are being rented out that have the homestead exemption.

Further discussion ensued

Vice Mayor Joyce Barton moved to pass the first reading of the proposed Ordinance 2023-02 for second kitchens; Commissioner Marivi Walker seconded; Motion carried 5-0.

8. Old Business

9. New Business

A. Consideration of updates to the Town Boards

Town Clerk Amber Brown spoke about this agenda item is to start a discussion on updates to the boards. The first item is discussing the status of the Historical Preservation and Awareness Board because the Board's status was previously discussed and put in a probationary status. The second item is to consider changing the term lengths for the Environmental Advisory Board (EAB), History Center Board (HCB), Historical Preservation and Awareness Board (HPAB), and Parks Board from two-year terms to three-year terms which would be consistent with the Planning and Zoning Board and Board of Adjustment. The third item is to consider allowing non-residents as board members for the EAB, HCB, and HPAB. The fourth item is to

consider increasing the number of members on the EAB, HCB, HPAB, and Parks Board to seven members plus two alternates. The last item is to consider allowing the HCB to change their meeting date and time from the first Thursday at 5:30 pm to the first Wednesday at 5:00 pm.

Further discussion ensued

Vice Mayor Joyce Barton spoke about being in favor of making the HPAB an official Board.

Mayor Wyatt Hoover spoke about moving forward with a draft resolution.

Commissioner Sherri Quarrie spoke about changing the name of the HPAB to include Ryckman House.

Vice Mayor Joyce Barton moved to change the term lengths for the mentioned boards to three-year terms; Commissioner Marivi Walker seconded; Motion carried 5-0.

***Ali Dennington
413 Surf Rd***

Ali Dennington spoke about consistency and simplicity is a good idea. Would like to ask if HPAB is an actual board right now since resolution 2021-03 was never passed. Was this board disbanded and still meeting as the board anyway.

***Crystal Cain
309 Surf Rd***

Crystal Cain spoke about clarifying what the HCB does and the HPAB. The HCB is just the museum whereas the HPAB is everything else in Town.

Vice Mayor Joyce Barton spoke about allowing a limited number of non-residents on a Board.

Town Manager Elizabeth Mascaro spoke about there being very knowledgeable people who are interested in being on our boards, but they do not live in Town.

Commissioner Corey Runte spoke about allowing a limited number of non-residents on the boards to take advantage of their passion and expertise.

Commissioner Sherrie Quarrie spoke about being in favor of it except for on the Board of Adjustment and Planning and Zoning Board.

Mayor Wyatt Hoover spoke about combining the non-resident item with the number of board members excluding the Board of Adjustment, Planning and Zoning, and Police Pension Fund the other Boards will be allowed to have seven members and two alternates of which two can be non-residents.

Ali Dennington
413 Surf Rd

Ali Dennington asked what Mr. Runte thinks about this because he was not a resident. What happens if someone lies about their address to get on a board? You have procedural rules about not interrupting people. If you have a hard time getting people why not have a closing time for residents to apply and then after that allow non-residents to apply. Have a rule to fill any open positions with a resident first. The Charter says you have to be a resident to be on the Commission and believes it says that for all of the Boards as well, so the Charter would need to be amended. You should not have non-residents if a resident is interested.

Mayor Wyatt Hoover spoke about the Commission having to approve each application.

Town Attorney Clifford Repperger read the Town Charter section 3.12 Advisory Boards which states "such boards shall be composed of a representative membership of registered electors of the Town.

Mayor Wyatt Hoover spoke about not addressing the non-resident issue.

Vice Mayor Joyce Barton moved to approve the number of board members for the specified boards to be seven members and two alternates; Commissioner Corey Runte seconded; Motion carried 5-0.

Mayor Wyatt Hoover spoke about the last issue is allowing the HCB to change the meeting date and time from the first Thursday at 5:30 pm to the first Wednesday at 5:00 pm.

Vice Mayor Joyce Barton moved to change the meeting date for the History Center Board to the first Wednesday at 5:00 pm; Commissioner Marivi Walker seconded; Motion carried 5-0.

B. Consideration of restoring the dolphin tree in Ryckman Park

Public Works Director Tom Davis introduced Phil Bryan who is the artist who originally carved the dolphin tree.

Phil Bryan spoke about the history of the dolphin tree and what he would like to do to restore it.

Further discussion ensued

Commissioner Sherri Quarrie spoke about keeping it as part of the park and not closing it off from people being able to access it.

Ali Dennington
413 Surf Rd

Ali Dennington said thank you to Tom for tracking the artist down. She doesn't like the idea of blocking the tree off from the public, but maybe add a bench near it to allow people to sit and take pictures. Post a plaque with the history of it and ask that people don't climb on it. It could be the Town mascot and you could have Gemini students come up with a name for it.

Vice Mayor Joyce Barton made a motion to move forward with restoring the dolphin tree not to exceed \$4,000.00; Commissioner Corey Runte seconded; Motion carried 5-0.

10. Staff Reports

A. Town Attorney Report

No additions

B. Town Manager Report

Town Manager Elizabeth Mascaro spoke about submitting fifty stormwater projects into the State System, Parks Board has fifty booths signed up for the kid's entrepreneur fair, Friends of the Melbourne Beach Library would like to sponsor a book box in Ryckman Park with kid's books at no cost to the Town, and the 5k on Founder's Day is not going to work out. The person that was going to coordinate it wanted it to be a dessert run so we could not come to an agreement. Another group wanted to do a moonlight run the night before Founder's Day which would not work due to staffing but they will be looking into doing it on the Spessard Holland Golf Course. The Town is looking into doing a fun obstacle course on the beach on the morning of Founder's Day.

C. Town Clerk Report

No additions

D. Departmental Reports

1. Building Department

Building Official Robert Bitgood spoke about not having any new homes or stop-work orders. There are a lot of renovations going on right now.

2. Code Enforcement

No additions

3. Public Works Department

Public Works Director Tom Davis spoke about updates on projects and introduced Sean Hasner the Public Works Foreman.

4. Police Department

No additions

Commissioner Sherri Quarrie spoke about the large increase in police department calls from the previous month.

5. Fire Department

No additions

6. Finance Department

Town Manager Elizabeth Mascaro spoke about a couple of overages such as salaries during hurricanes which get reimbursed from FEMA, the second area is tree removal, and the communication budget for the police dispatch was \$500.00 more than what was estimated. Looking into the building department and where some items are being put to make sure they are put in the correct line item.

Ali Dennington
413 Surf Rd

Ali Dennington spoke about the Town rules which say during public comment she can ask anyone questions and they are supposed to answer, and if they don't know the answer they are supposed to say they will look it up and get back to you. Ali Dennington spoke about not accounting for the revenues properly for the building department and having to do corrected W2s for the already corrected W2s. She asked what the process is for selling old Town vehicles. She heard the Town bought the vehicle the building official drives around town from his daughter which is a huge conflict of interest. Why did Tom resign, why did Robert Schaefer resign.

Commissioner Sherri Quarrie spoke about being allowed to take money from one line item within a department to cover another line item within the same department.

Vice Mayor Joyce Barton made a motion to approve the finance report as presented; Commissioner Corey Runte seconded; Motion carried 5-0.

11. Town Commission Comments

A. Review of Commission Action Item List

Updated

- **Town Newsletter** – Get 3 quotes for publishing and mailing every other month on 11x17 in color - March

- **Sixth Ave Boat Ramp:** Public Works Director Tom Davis spoke about meeting with Bowman Engineering at the Sixth Ave boat ramp to get them to draw something up – March
- **Second Kitchens:** Closed
- **Isolate Dunes:** Public Works Director Tom Davis spoke about a resident contacting DEP and due to turtles the wood fencing had to be removed, so colored rope is being installed instead– March

B. General Comments

Vice Mayor Joyce Barton spoke about changing the order of the agenda such as staff reports towards the beginning so employees do not have to stay for the whole meeting, and general public comment towards the end so it doesn't set the tone for the meeting.

New Action Item – Address the order of the agenda for Town Commission Meetings- Town Clerk - March

12. Adjournment

Commissioner Sherri Quarrie moved to adjourn; Commissioner Corey Runte seconded; Motion carried 4-0.

Meeting adjourned at 9:34 p.m.

ATTEST:


 Joyce Barton, Vice Mayor


 Amber Brown, Town Clerk

