



Fort Myers Beach Town Council

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

Minutes

Monday, February 6, 2023

9:00 AM

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veatch and Council Member Woodson.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member Veatch moved to move A. under the Consent Agenda to follow the presentation; second by Mayor Allers.
Motion carried unanimously.

Council Member King moved to approve the final agenda as amended; second by Mayor Allers
Motion carried unanimously.

V. PUBLIC COMMENT

Wendy Herron, resident, commented that people were taking pictures of residential neighborhoods and being disruptive to the recovery. She suggested installing Residents Only signs on her street and noted she and her neighbors would cover the costs of the sign. She thanked everyone for their efforts to make the island whole.

David Bauer, resident, noted that the town informed him that he had to move his front porch back six inches, which cost him \$20,000.00. He added that because he was not allowed to raise his air conditioner, it was lost in the hurricane. He asked that the town look at reality regarding setbacks and that property owners should be able to repair or rebuild what existed before the hurricane. He stated the canals were in bad shape and needed to be dredged.

Tauheedah Mateen from the Small Business Association (SBA) indicated that the State did not receive an extension for Hurricane Ian, but the SBA was still accepting applications for physical damages; however, the applicant had to submit a justification as to why they missed the deadline. She urged residents and business owners to speak with SBA representatives if they had questions.

Richard Durling from Marvin Homes represented a property owner whose home was destroyed. The house was less than 700 square feet and the homeowner wanted to rebuild a two-story home over parking on the same footprint. Mr.

Durling requested that property owners be allowed to build taller structures like the funky fish houses in Cape Harbour. He suggested that the Town Council address the issue upfront.

Jesse Field introduced himself and requested that he be considered for appointment to the Bay Oaks Recreational Campus Advisory Board (BORCAB). Madeline Boyd, resident and co-owner of the Beach Bar, thanked everyone who helped to clean the sidewalks.

Dawn Goetzel, Director of Sales for Marvin Homes, represented a customer who wanted to rebuild her home. She read a letter from her client concerning rebuilding a two-story house on the same footprint and noted many neighbors had two-story homes.

Tom Torgerson, resident, commented on the beach dune renourishment and noted he was concerned about the beach vegetation options. He described the characteristics of the railroad vine and suggested that it be included in the low-profile option.

Neery Korn, business owner, commented that he still did not have electricity in Times Square and asked for help.

Dan Dodrill, home builder, represented a property owner who wanted to rebuild a two-story home over parking. He described similar tall homes built in the neighborhood before the hurricane.

Chris Rayburn, resident, thanked the staff for being so responsive. He supported the beach renourishment but was concerned regarding the easement language. He noted that he sent his concerns to Environmental Projects Manager Chadd Chustz.

Charles Drake, resident, visited Mexico Beach last year and noted there were still a lot of vacant lots four years after Hurricane Michael. He suggested the town work towards rebuilding the tax base.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Atterholt thanked everyone involved for cleaning the sidewalks over the weekend.

Council Member Veach recognized the homeowners in the Hibiscus Dr. neighborhood who were replanting the cul-de-sac.

Council Member Woodson commented on the cleanup and the commitment. She agreed that the town needed to continue to look at rebuilding and thanked those who commented.

Mayor Allers noted there was a joint beach cleanup in addition to the sidewalk cleanup. He thanked the contractors who volunteered to help remove sand.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**A. Anchorage Advisory Committee Appointments****Appoint Members to the FY2022-2023 Anchorage Advisory Committee (AAC)**

Council Member Veach moved to approve the applicants for the AAC;
second by Mayor Allers.
Motion carried unanimously.

B. Audit Committee Appointments**Appoint Members to the FY2022-2023 Audit Committee**

Council Member King moved to approve the applicants for the Audit Committee; second by Vice Mayor Atterholt.
Motion carried unanimously.

C. Bay Oaks Recreational Campus Advisory Board Appointments**Appoint Members to the FY2022-2023 Bay Oaks Recreational Campus Advisory Board (BORCAB)**

Mayor Allers stated there were three open positions and six applicants. Betty Simpson, Bruce Butcher and Jessie Field were appointed.

D. Cultural and Environmental Learning Center Advisory Board Appointments**Appoint Members to the FY2022-2023 Cultural and Environmental Learning Center Advisory Board (CELCAB)**

Mayor Allers stated there were four open positions and five applicants. Town Clerk Baker indicated that one applicant was not a resident and would need a waiver to participate if chosen. Another applicant would need a waiver to participate on more than one committee if chosen. Barbara Hill, Betty Simpson, Cherie Smith and Kerrie Henderson were appointed.

Mayor Allers approved waivers for Betty Simpson and Kerrie Henderson;
second by Council Member Veach.
Motion carried unanimously.

E. Marine and Environmental Resources Task Force Appointments**Appoint Members to the FY2022-2023 Marine and Environmental Resources Task Force (MERTF)**

Council Member Veach moved to approve the applicants; second by Mayor Allers.
Motion carried unanimously.

F. Public Safety Committee Appointment**Appoint Members to the FY2022-2023 Public Safety Committee (PSC)**

Mayor Allers stated there were three open positions and four applicants. Council Member Veach noted some candidates were not residents. Heidi Jungwirth, Dawn Thomas and Keran Farrell were appointed.

Vice Mayor Atterholt moved to approve waivers for Heidi Jungworth and

Keran Farrell; second by Council Member Woodson.
Motion carried unanimously.

VIII. APPROVAL OF MINUTES

- A. Town Council January 9, 2023
Mayor Allers moved to approve the minutes; second by Council Member King.
Motion carried unanimously.
- B. Management & Planning Session January 12, 2023
Mayor Allers moved to approve the minutes; second by Council Member King.
Motion carried unanimously.
- C. Town Council January 23, 2023
Mayor Allers moved to approve the minutes; second by Council Member King.
Motion carried unanimously.

IX. PRESENTATION

- A. Emergency Berm and Estero Island Nourishment Projects status

Coastal Engineering Consultants, Inc.

Michael Poff from Coastal Engineering Consultants, Inc. utilized PowerPoint for his presentation. He discussed the two construction elements of the project. He noted that they had been working on beach renourishment, as stated in B., for several years and A. was for an emergency berm due to the damage from Hurricane Ian.

Slides include Beach Fill Segments; North: Bowditch Point-Canal St.; Central: Canal St.-Lannark Ave.; South: Creciente Condo-Sun Caper; Hurricane Ian Impacts; Borrow Areas; Permit Status; Updated Preliminary Opinion of Probable Project Cost; Beach Project Funding; Construction Easements; Easement Definition Sketch; Construction Details; Pipeline Corridors & Landings North & South; What to Expect; Post-Construction Requirements; Emergency Berm; Typical Cross Sections and Funding & Schedule.

Mr. Poff described the process and timeline to request a modification to the vegetation options for the dunes.

Mayor Allers moved to direct staff and Mr. Poff to pursue adding a fourth option through the county and state for a railroad vine; second by Vice Mayor Atterholt. Mayor Allers withdrew his motion because the railroad vine was already included in the dune management plan.

X. CONSENT AGENDA**A. Estero Island Emergency Berm Construction Phase Services.**

Authorize the Town Manager to execute Supplemental Task Authorization #2 for Contract RFQ-21-09-EN with Coastal Engineering Consultants, Inc. for Estero Island Emergency Berm Construction Phase Services.

Council Member Veach moved to authorize; second by Mayor Allers.
Motion carried unanimously.

B. Estero Island Beach Nourishment Project.

Authorize the Town Manager to execute Supplemental Task Authorization #3 for with Coastal Engineering Consultants, Inc. for the Estero Island Beach Nourishment Project.

Town Attorney Herin, Jr. stated that this item was separate from the berm construction and had been on and off the agenda for over a year. He suggested that it be pulled for discussion if Vice Mayor Atterholt wished.

Vice Mayor Atterholt moved to pull this item from the Consent Agenda for discussion; second by Council Member Veach.
Motion carried unanimously.

Council Member King moved to authorize; second by Mayor Allers.
Motion carried unanimously.

C. Resolutions: 23-12, 23-13, 13-14 and 23-15

Approve Resolutions Extending the Town Declaration of State of Local Emergency for the period February 6 - February 12, 2023, February 13, 2023 - February 19, 2023, February 20, 2023 - February 26, 2023 and February 27, 2023 - March 5, 2023

Vice Mayor Atterholt moved to approve the resolutions; second by Council Member King.
Motion carried unanimously.

XI. PUBLIC HEARINGS**A. Ordinance 22-13; Fees by Resolution**

Final reading and second public hearing on proposed ordinance 22-13 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ESTABLISHING A NEW SECTION 1-13 OF CHAPTER 1 OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE ADOPTION, AMENDMENT AND IMPLEMENTATION OF FEES AND FEE SCHEDULES BY RESOLUTION UNLESS PROHIBITED BY STATE LAW OR THE TOWN CHARTER, PROVIDING FOR CODIFICATION, CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance.

No public comment.

Council Member Woodson moved to approve the ordinance; second by Mayor Allers.

Motion carried unanimously by roll call vote.

B. Ordinance 23-02; Corner Lot and Setback Regulations

First reading and Public Hearing of proposed Ordinance 23-02 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 3, SECTION 34-638 MINIMUM SETBACKS, SECTION 34-2 DEFINITIONS, AND TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open first public hearing and schedule for second reading and final adoption Tuesday, February 21, 2023 at 9:00 a.m.

Mayor Allers read the title of the ordinance.

Community Development Planner Sarah Propst explained that topics in the ordinance related to setbacks. She utilized PowerPoint for her presentation. Slides included Corner Lots as modified by the Local Planning Agency (LPA); Porches, Stoops and Additional Setback; Return of the 7.5-foot and 10-foot Side Setbacks. Council Member Veach suggested keeping the percentage calculation and tweaking it for smaller lots and planner Propst agreed that the percentage was fairer for smaller lots. Additional items included side street setbacks for Matanzas Street and Matanzas Court and elevating mechanical equipment and electrical panels for existing homes.

Public comment:

Carolyn Caney from Woodland Custom Homes agreed with the proposed side street setbacks and the three-foot encroachment of air conditioning units. She felt setbacks for lots over 75 feet wide should be 10 feet.

Kara Stewart noted that the 7.5-foot setback up to and including a 75-foot lot was standard. She commented that the percentages were challenging to work with and did affect lots smaller than 75 feet.

Dave Lay, resident, planned to elevate his house and a 15% setback requirement would be wider than he had. He noted that elevating homes

required additional space for landings and stairwells. He encouraged the Council to revert to the old setbacks.

Jerry Kim, resident, described his unusual corner lot on Estero Blvd. He indicated the rear setback was not addressed.

Fred Drovdic, consultant, supported the LPA's recommendation. He noted a client has a lot of 75 feet and 6 inches and suggested that the ordinance round down to the nearest foot. He brought up side street setbacks for 76 feet lots and felt that going to 80 feet would take care of some variance requests.

Public comment closed.

Vice Mayor Atterholt moved to approve Ordinance 23-02 as proposed and recommended by the LPA and schedule it for a second reading on Tuesday, February 21, 2023, at 9:00 a.m.; second by Council Member Woodson.

Council Member Veach supported a 10% setback with a minimum of 7.5 feet. He felt that percentages would help people who would be penalized by having lots a little too large.

Mayor Allers questioned air conditioners encroaching on the neighbors. Planner Propst responded that it was for existing houses only and the original intent was for generators. New homes will be required to meet setbacks.

Council Member Woodson supported the proposal.

Motion carried 4-1 by roll call vote with Council Member Veach dissenting.

C. Ordinance 23-03; Nonconforming Lots, Minimum Use Determinations and Administrative Variances

First reading and Public Hearing of proposed Ordinance 23-03 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 4, SECTIONS 34-3273 GENERAL REQUIREMENTS FOR RESIDENTIAL USES ON NONCONFORMING LOTS, SECTION 34-3274 MINIMUM USE DETERMINATIONS, AND CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open first public hearing and schedule for second reading and final adoption Tuesday, February 21, 2023 at 9:00 a.m.

Mayor Allers read the title of the ordinance.

Planner Propst noted that two sections of the code made small cottage lots undevelopable and a few amendments to the code would make those lots developable. Slides in her presentation included Sec. 34-3273 General Requirements for Residential Uses on Nonconforming Lots; Section 34-3273 Minimum Use Determinations; What This Accomplishes and What This Does Not Accomplish and Sec. 34-268 Administrative Setback Variances. She noted that administrative approval was very narrow to protect staff from making decisions that should go before the Council and allow property owners to build back what they had before the hurricane.

Public comment:

Richard Durling from Marvin Homes indicated that his client wanted to build a two-story in the existing footprint and give additional setbacks to the neighbors. He supported allowing staff to approve two-story houses administratively.

Dan Dodrill from Daniel Wayne Homes noted his clients had small cottage lots and felt that if they met all the setbacks, they should be allowed to build two-story houses. He commented that the cost was prohibitive for an 800-square-foot house.

Jerry Kim agreed with the previous comments and felt two-story houses should be approved administratively, especially if they did not block anyone's view.

Public comment closed.

Mayor Allers was in favor of allowing administrative variances for two-story houses.

Council Member Woodson agreed with Mayor Allers.

Council Member Veach was concerned about emergency access between houses with small setbacks. He suggested more of a setback with two stories. Planner Propst stated that she would contact the fire department regarding access for emergency vehicles for the second reading.

Vice Mayor Atterholt verified that if staff had concerns about approving a variance, they could deny the request.

Council Member Woodson mentioned the cost per square foot with one story versus two stories.

Mayor Allers moved to approve Ordinance 23-03 as written, with the exception of adding a second story to be brought back for a second hearing on Tuesday, February 21, 2023, at 9:00 a.m.; second by Council Member King.

Motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

- A. Contract for Bay Oaks Recreation Center emergency dry out services
Authorize the Town Manager to execute a first amendment to the existing contract with Coastal Maintenance and Restoration to include the emergency dry out services for Bay Oaks Recreation Center.
Director of Culture, Parks & Recreation Alison Giesen indicated the amendment was for the dry-out services previously approved for a temporary town hall. Interim Town Manager Wilkins commented that the work was already done to dry out Bay Oaks and was separate from a temporary town hall.

Council Member Veach moved to authorize; second by Council Member King.

Motion carried unanimously.

B. Mound House Historic Preservation Repairs

Accept the sole source proposal from Fine Art Conservation Studios Inc in the amount of \$119,223.55, for repairs to the historic structures at the Mound House damaged by Hurricane Ian and authorize the Town Manager (or designee) to negotiate the final price and contract terms for presentation and approval by the Town Council at a subsequent meeting.

Director Giesen stated the company was international and they provided services for the town on other occasions. She included background information for the company in the packet.

Council Member Woodson moved to accept the proposal; second by Vice Mayor Atterholt.

Motion carried unanimously.

C. RFP-23-07-AD; Disaster Recovery and Mitigation Consulting Services

Motion to approve an Agreement between the Town of Fort Myers Beach and Tidal Basin Government Consulting, LLC, the top ranked respondent to RFP-23-07-AD - Disaster Recovery and Mitigation Consulting Services for Incidents and Events and authorizing the Town Manager to execute and expend budgeted funds on behalf of the Town.

Council Member King moved to approve; second by Council Member Woodson.

Motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

Bill Perry questioned whether the FEMA berm sand placed close to homes without seawalls would be considered public land and public use.

Bill Perry questioned whether the FEMA emergency berm and renourishment easements were both for 15 years. Town Attorney Herin, Jr. replied that both were intended to give access to the contractors. He indicated that the easements would be seaward of the dunes and people should not be cutting through them.

XIV. TOWN MANAGER'S ITEMS

Interim Town Manager Wilkins appreciated the sidewalk cleanup over the weekend. He noted the legislature was meeting to discuss \$50 million for hurricane relief funds. He stated the first meeting with the builders' user group went well and another would be held on Saturday. The meetings were to discuss issues with builders regarding the permit system. Lee County announced that Lynn Hall Park would be open on April 15, 2023, with Crescent Beach and Bowditch opening on May 15, 2023. Lee County was also working on cleaning the sidewalks and streets.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. addressed Mr. Perry's question and stated that the area covered by the easement was for public use, as previously discussed. He noted that it depended on the property as to where the berm would be located. He stated that customary public use as defined by case law meant enjoyment but not holding parties. He added that there were additional restrictions to protect the dune area.

- A. Request for attorney-client "shade" meetings to discuss pending litigation:
Persaud Properties FL Investments, LLC, v. Town of Fort Myers Beach, Florida and Roger Hernstadt; Case No. Case No. 2:21-cv-384-JLB-NPM
pending before the United States District Court Middle District of Florida, Fort Myers Division.

Persaud Properties FL Investments, LLC vs. Town of Fort Myers Beach, Florida, Case No. 2017-CA-000219 pending before the Circuit Court of the 20th Judicial Circuit in and for Lee County

Town Attorney Herin, Jr. requested authorization to schedule shade meetings for both cases. He noted the first case involved the dispute regarding the sale of alcoholic beverages at the Sunset Grill and the second concerned the two homes constructed on the lot adjacent to where the Junkanoo existed.

Mayor Allers moved to authorize the Town Attorney to schedule those meetings; second by Council Member King.
Motion carried unanimously.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King requested clarification regarding the location of the emergency berm. Town Attorney Herin, Jr. thought an engineer was involved in determining where it was located, and Interim Town Manager Wilkins agreed and added the property owner did have some latitude. Council Member King questioned whether one could opt out of the beach renourishment but opt in for the emergency berm. Town Attorney Herin, Jr. replied that if one opted out of the beach renourishment project, nothing would be done to the property except the beach renourishment up to the mean high water line.

Council Member Woodson requested an update regarding FP&L and street lighting. Mayor Allers replied he had a meeting on Friday with FP&L. Council Member Woodson wondered if they should address the code from the past few years to see whether it could be streamlined. Interim Town Manager Wilkins felt an analysis would be helpful. Planner Propst stated that the code would be reviewed by the Corradino Group. Council Member Woodson brought up food trucks operating without a permit; Interim Town Manager Wilkins will look into the issue.

Council Member Veach suggested discussing the future of the Bay Oaks building. Mayor Allers stated that the November deadline in the loan was not to use the funds but to construct the building. Interim Town Manager Wilkins noted that he

was figuring out which projects the town could complete by November. Council Member Veach questioned whether they could change the agenda to allow agencies to comment in the Advisory Committee Items section to enable dialogue with Town Council Members. Vice Mayor Atterholt replied that Council Members could ask for unanimous consent to proceed out of order. Council Member Veach heard that people were doing work without permits and questioned allowing a limited partial amnesty. He received support to add it to a future M&P and Interim Town Manager Wilkins received consensus to add fees. Council Member Veach encouraged people to wear shoes in the sand due to debris. He concluded by noting that, according to the census, the town has lost 12.5% of its population over the last 10 years.

XVII. ADJOURNMENT

Council Member King moved to adjourn; second by Mayor Allers. Motion carried unanimously.

The meeting was adjourned at 1:02 p.m.

Minutes adopted as presented, February 21, 2023; Motion by Mayor Allers and seconded by Council Member King. Passed 5-0.



Amy Baker, Town Clerk