



Fort Myers Beach Town Council

**Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Monday, March 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

Vice Mayor Atterholt moved to approve the final agenda with C. and D. pulled from the Consent Agenda; second by Mayor Allers.

Motion carried unanimously.

V. PUBLIC COMMENT

Mary Rose Spalletta, resident, requested Council deny the dune walkover. She was disappointed that the Marine and Environmental Resources Task Force (MERTF) was not meeting on Wednesday. She suggested that the town rebuild up rather than out and that more beach accesses with porta potties be created at the south end. She questioned whether the churches could combine campuses to free up green space or turn one into an amphitheater. She would like a safe bike lane, plastic-free bags at Publix and CVS and amber lights throughout the town. Madeline Boyd, co-owner of the Beach Bar, requested more trash cans and porta-potties at beach accesses.

Jeanne Guzy thanked Council Members and brought up a pool that was purposely filled with debris and a condemned house that had not been removed.

VI. PROCLAMATIONS

A. Flood Awareness Week

Flood Awareness Week

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Members Veach and Woodson thanked Town staff who were removing dead fish from the beach.

Council Member King congratulated the hard-working staff regarding the recent Senator's Pride award. He acknowledged Ed from Beach Talk Radio and congratulated Tunaskin and Mid-Island Water Sports for their environmental stewardship awards for cleaning up the beach.

Mayor Allers recognized the town staff for cleaning up the beach. He explained that the Senator's Pride award recognized staff and the town for achievements over the last five months.

No items from other members.

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

LPA Member Patrick Vanasse summarized their last meeting, including recommendations for approval regarding live/work use and the dune walkover. He mentioned streamlining the review and hearing process and the upcoming joint LPA meeting. Consensus was reached to adopt a process to put non-controversial items unanimously supported by the LPA on the consent agenda.

A. Bay Oaks Recreational Campus Advisory Board Appointments

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

Beth Cherry, John Dussliere and David Ennen applied for the vacancy. John Dussliere was chosen to fill the vacancy.

Council Member Woodson moved to waive the full-time residency requirement; second by Council Member King.

Motion carried 4-1 with Council Member Veach dissenting.

IX. APPROVAL OF MINUTES

A. Town Council - February 21, 2023

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

Motion carried unanimously.

X. CONSENT AGENDA

Council Member Veach moved to approve the consent agenda with items C. and D. pulled for discussion; second by Council Member Woodson. Motion carried unanimously.

A. Resolutions 23-18 and 23-19

Resolutions 23-18 & 23-19 entitled: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR

SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

B. Resolution 23-17; WCIND Law Enforcement Grant

Resolution 23-17 entitled: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO APPLY FOR, EXECUTE UPON AWARD, AND ADMINISTER A GRANT FROM THE WEST COAST INLAND NAVIGATIONAL DISTRICT PROGRAM FOR FUNDS IN THE AMOUNT NOT TO EXCEED \$50,000 FOR ADDITIONAL MARINE PATROL AROUND ESTERO ISLAND; AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE RELATED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE

Council Member Veach moved to approve the resolution; Vice Mayor Atterholt. Motion carried unanimously.

C. Recurring Special Event

Recurring Special Event - Approval of a Reconstruction Center

Interim Town Manager Wilkins clarified that the center would be open for vendors to assemble and offer services. Mayor Allers added that he thought the center was a for-profit venture. A gentleman from ICS Materials explained that his group charged vendors for the rental space and they were not making a profit. He said they would ensure the contractors did not price gouge clients. He distributed information included in the packet and noted he would provide a list of vendors for the town.

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

D. Special Event

Sunset Celebration in Times Square

Ed Ryan described the March 18, 2023, celebration event and noted no food or alcohol would be served. He reported that two new tents and supplies were donated for the MERTF pop-up events and \$4,000.00 was raised to replace the echo art supplies at Lovers Key.

Vice Mayor Atterholt moved to approve; second by Council Member Veach. Motion carried unanimously.

XI. PUBLIC HEARINGS**A. Ordinance 23-04; Pink Shell CPD Amendment**

2nd Reading and Public Hearing on proposed Ordinance 23-04 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 13-23, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 200 AND 275 ESTERO BLVD., FORT MYERS BEACH; 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 second public hearing and approve CPD amendment ordinance.

Mayor Allers read the title of the ordinance. Town Attorney Herin, Jr. swore in those providing testimony for items A, C, D, E and F. Ex parte communications: no disclosures since the first hearing.

Community Development Planner Sarah Propst reviewed the background of the request as stated on the blue sheet.

Bill Waichulis, Senior Vice President of Operations, indicated that he could not guarantee they would not purchase boats for short-term rentals in the future.

No public comment.

Vice Mayor Atterholt moved to approve Ordinance 23-04 with conditions; second by Mayor Allers.

Motion carried unanimously by roll call vote.

B. Ordinance 23-05; Temporary Placement of Governmental Uses and Mobile Homes in the Town

1st Reading and Public Hearing on proposed Ordinance 23-05 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE PLACEMENT OF TEMPORARY HOUSING AND TEMPORARY GOVERNMENTAL USE FACILITIES IN SPECIFIED ZONING DISTRICTS OF THE TOWN, PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, SUNSETTING OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on March 20, 2023 at 9:00 AM

Mayor Allers read the title of the ordinance. Town Attorney Herin, Jr. clarified that this action was to memorialize what had already occurred. He confirmed that they could add language to prevent short-term rentals. Interim Town Manager Wilkins said he would work with the zoning department for guidelines.

No public comment.

Council Member Veach suggested modifying language to allow contractors to reside in RVs temporarily and to administratively allow two RVs per property. Town Attorney Herin, Jr. agreed to add language.

Mayor Allers moved to schedule the ordinance for a second hearing on March 20, 2023, at 9:00 a.m.; second by Council Member Woodson. Consensus was reached to prohibit the use of tents as temporary housing. Motion carried unanimously by roll call vote.

C. Ordinance 23-06; 6249 Estero Blvd - Carousel Residential Planned Development (RPD)

1st Reading and Public Hearing on proposed Ordinance 23-06 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 18-11, AND AMENDING THE SCHEDULE OF USES FOR THE RESIDENTIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 6249 ESTERO BLVD., FORT MYERS BEACH; 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 March 20, 2023 at 9:00 AM

Mayor Allers read the title of the ordinance. Planner Propst noted that the request was for an amendment to add a rooftop deck and shade structure. She indicated that staff recommended approval with conditions. She added that the advertisement and ordinance had an incorrect address and it would be corrected before the second hearing. Ex parte communications: none disclosed.

Ken Gallander represented the Carousel beach development and noted that he was in full agreement with the conditions imposed.

No public comment.

Council Member Veach moved to move the ordinance to a second reading on March 20, 2023, at 9:00 a.m.; second by Council Member King.

Motion carried unanimously by roll call vote.

D. VAR20220018 - 8180 Lagoon Road

Adopt Resolution 23-20 entitled: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENY VARIANCE VAR20220108 TO ALLOW A POOL SETBACK VARIANCE OF ONE-FOOT FROM THE REQUIRED 15 FOOT SIDE STREET SETBACK FOR THE PROPERTY LOCATED AT 8180 LAGOON ROAD; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Planner Propst described the side street setback request of one foot for a pool. Staff recommended denial because it did not meet all the code-required findings. She noted that the LPA recommended approval and the neighbors did not oppose the request. Planner Propst described the permit review process and Town Attorney Herin, Jr. added that there was a 30-day appeal window with all quasi-judicial items. Ex parte communications: Vice Mayor Atterholt - several conversations and emails and Mayor Allers - a couple of drive-bys. No disclosures from other members.

Janelle Schoonover, applicant, stated they signed a contract with Lucas Lagoons at the end of 2019 and they were still trying to get a permit. She commented that changing the design of the pool would not work with the rest of their property. Ed Schoonover added that their neighbors supported their request.

LPA Member Vanasse explained that the LPA supported the variance request because the pool was set back further than the existing home.

Public comment:

Bruce Butcher, resident, supported the request.

Public comment closed.

Vice Mayor Atterholt moved to approve Resolution 23-20; second by Council Member King.

Motion carried unanimously by roll call vote.

E. SEZ-20220120; 6875 Estero Blvd

Resolution 23-21 entitled: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING APPLICATION SEZ-20220120, FOR A SPECIAL EXCEPTION APPROVAL FOR LIVE/WORK USE FOR THE PROPERTY LOCATED AT 6875 ESTERO BOULEVARD; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Planner Jason Smalley reviewed the request for a work/live special exception as stated on the blue sheet. He noted the applicant requested building a second level for their residence, with their business on the first level. Staff reviewed the application and recommended approval with conditions.

Vice Mayor Atterholt congratulated Planner Smalley and the staff for working with the applicant and coming to a sensible outcome. He suggested making the process easier in the comprehensive plan.

Council Member Veach agreed and added that they were working on making the process easier. He questioned if the owners sold the building could new owners could create short-term rentals. Planner Smalley replied that the occupier of the building was required to live in the residence with the business below. Town Attorney Herin, Jr. stated that Council could impose a condition to prevent short-term rentals.

Ex parte communications: Vice Mayor Atterholt - emails and Mayor Allers - drive-bys. No disclosures from other members.

Ruby Pessotti, applicant, described her request and agreed with the conditions. She added that her neighbors in the community supported the design of her building.

No public comment.

Council Member Veach moved to approve Resolution 23-21; second by Council Member Woodson.

Motion carried unanimously by roll call vote.

F. SEZ 20220104 - Texas Hold'em and Squeeze Me Inn Dune Walkover and Boardwalk

Resolution 23-22 entitled: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING SPECIAL EXCEPTION SEZ20220103 TO ALLOW THE USE OF A SHARED DUNE WALKOVER AND BOARDWALK AT 8150 AND 8170 ESTERO BOULEVARD; AND APPROVING/DENYING VARIANCE VAR20220104 TO ALLOW A ONE FOOT VARIANCE FROM THE MAXIMUM WIDTH OF THE STRUCTURE;AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Ex parte communications: Vice Mayor Atterholt - conversations with applicants and others; Council Member Veach - conversations with Brad Cornell from Audubon, numerous constituents and previous iterations of the request; Council Member Woodson - site visit pre and post-Hurricane Ian, watched meetings, conversations with Audubon and many constituents; Council Member King - conversations with numerous people and Mayor Allers - site visit and numerous conversations with people.

Attorney Seth Behn represented the clients and distributed his presentation. He described the history of the case. The presentation started with Low-Density Residential/Recreation; Zoning: Residential Single Family Environmentally Critical.

Kurt Kroemer, applicant, reviewed Sec. 34 of an ordinance regarding dune walkovers being allowed by right. He stated that he bought a beachfront property and wanted access to the beach. He noted that the LPA (Local Planning Agency) recommended approval at 6-1 and asked the Council to approve their request.

Eddie Rood, applicant, clarified that the ponds behind his house were not part of the Gulf and he had access to the beach until a neighbor put up a fence. He noted that the final order was based on facts, not opinions. He reiterated that it was his right to build a walkover and to enjoy his home.

Attorney Behn returned to Current Use: Residential; CWA Boundary; Dune Walkover Design Location; Survey Recertification; Aerials; Beach Restoration Analysis; Special Exception Criteria; Change Conditions; Accessibility Issue; Consistency with the Comprehensive Plan; Code Performance and Locational Standards; Additional Standards; LPA Requirements; Protection of Natural Resources; Compatible with Surrounding Uses; FDEP (Florida Department of Environmental Protection)

Guidance; Dune Management Plan; Lynn Hall Memorial Dune Walkover Improvement Project; Variance Application Standards and Request.

Planner Propst reviewed the special exception and variance requests and noted that staff found that the special exception request did not meet the requirements because there did not appear to be changed or changing conditions, which would make the request appropriate. She indicated that the staff did not have the opportunity to review the plans for the boardwalk and other documents submitted by the applicants on Thursday afternoon. She noted that the proposed dune walkover created a pathway over a lagoon to a critical wildlife area where pedestrians did not usually traverse, rather than an open beach. The request was unlikely to be compatible with the existing uses, which was a critical wildlife habitat for shorebirds. She explained why the variance request for a five-foot wide dune walkover did not meet the requirements per the staff report. Planner Propst indicated it would take a week to review the documents the applicants submitted last Thursday.

Public comment:

Wendy Herron, stated that Mr. Rood was aware of the CWA (Critical Wildlife Area) when he bought his property and the proposed walkover was not open to the public. She felt it was setting a precedent and did not support the request.

Cindy Johnson, resident, pointed out that it was not a dune walkover but a boardwalk over the water. She noted that that section of the boardwalk was closed when nesting storks were present at Corkscrew Swamp. She questioned whether the proposed path would be closed during shorebird nesting season. She described the stressful situation in the area and noted that the FWC (Fish & Wildlife Conservation Commission) instituted further protections for the birds starting in September.

Steve Johnson, resident, described the environmentally critical (EC) zone versus the state-owned CWA. Allowing a 300-foot structure through the EC's natural buffer was wrong; no one wanted to see an unattractive bridge crossing a pristine wildlife area. The basis of the decision should not be a popularity contest but a determination of compliance with the LDC (Land Development Code) and the comprehensive plan. He noted that the Town Council's previous decision trumped the state's DEP permitting ability. He added that it was the Council's responsibility to explain how the case was consistent with the LDC and comprehensive plan if they approved the requests.

Brad Cornell from Audubon Florida, described the Lee Shorebird Stewardship Program and the species of birds on the beach. He noted the development would hurt the species. He asked to be recognized as a party to the quasi-judicial proceeding to present on Audubon's behalf and question witnesses.

Rochelle Streker, Southwest Florida Shorebird Manager for Audubon, worked on the beach and was there to answer questions from Mr. Cornell. Town Attorney Herin, Jr. stated that it was up to the Council to decide whether Audubon had party status at the hearing. He noted that case law

suggested that groups for individuals had party status and could make a more detailed presentation like the applicant. Attorney Behn agreed with granting them time to present further evidence, but he objected to the back and forth to question witnesses. He noted that Audubon was a named party when they sued the applicant regarding the environmental permits. Town Attorney Herin, Jr. explained the legality of party status and noted litigation was possible regardless of the Council's decision. He did not think allowing Audubon party status would result in litigation regarding standing. He added that Audubon could state their questions and then Council could decide on party status.

Attorney Behn stated that if Audubon were given party status, he would request the right to cross-examine witnesses. Town Attorney Herin, Jr. responded that was his right.

A majority of members agreed to give Audubon party status and Town Attorney Herin, Jr. recommended continuing with public comment before making decisions.

Larry DenHerder, resident, listed all the reasons he supported the project. Barbara Hill, resident, commented that the long bridge would be built on public land and requested that they deny the application. She added that the FDEP order ultimately deferred to the beach. She explained that no dunes in the area required a walkover and questioned how they could allow the owners the right to build an unprecedented private structure on that part of the beach. She questioned what would happen when the beach changed and whether others would be allowed to do the same. She described threatening wildlife species and urged denial of the request.

Bruce Butcher, resident, described the south end and the mucky lagoon. He commented that the birds that nested in the area were not near the walkover.

John Cameron, resident, supported the request for a beach walkover and noted that if the town filled in the area with sand, they would not be there today.

Dennis Prock, resident, was familiar with the beach and stated the birds did not nest in front of the area because of the mangroves. He reviewed his history with the FWC and FDEP and said he had a permit to trim mangroves. He noted that traffic in the CWA was ongoing and felt that a designated area would help the environment. He supported the request.

LPA Member Vanasse noted they based their decision on the information and testimony provided. The LPA felt the final order by the FDEP met the environmental and public interest tests, and the majority believed that it met all the criteria and recommended approval.

Mary Rose Spalletta, resident, felt that the people who bought the land knew what they were facing and the structure was a boardwalk, not a dune walkover. Public use did not mean a handful of houses and she thought it was a land-grab issue by the applicants. She stated that the entire island was very environmentally sensitive and structures did not protect the beach and the boardwalk would attract more people. She felt they should deny the request because the town was the beach steward.

Mr. Cornell thanked Council for allowing Audubon party status and Audubon appreciated the years-long relationship with the town. Audubon agreed with the majority of the staff report but had further questions. He questioned whether staff reaffirmed their findings to deny the request. Planner Propst replied affirmatively. Mr. Cornell asked whether reviewing the documents submitted last Thursday would change their recommendation of denial.

Planner Propst responded that she thought the applicants provided the requested additional documentation, but she did not know that it would cause them to conclude that staff would say that they recommended approval based on the criteria. Mr. Cornell questioned what was in the documents.

Planner Propst responded that the packet was 55 pages and she did not recall everything included, but a letter submitted on Friday stated that all documents requested by the town were submitted.

Mr. Cornell requested that Ms. Streker answers questions. Ms. Streker reviewed her education and experience as the Southwest Florida Shorebird Manager and her involvement with other conservation groups. She described the areas she was responsible for managing. Mr. Cornell shared a letter from the FWC to the DEP with Ms. Streker regarding the impact of the proposed structure on birds in the area and increased pedestrian traffic. Ms. Streker shared her concerns about the Little Estero CWA and the private land surrounding the area. She noted that the area was crucial to the nesting birds and agreed with the letter. She described the FWC's shore mapper tool and noted that several species were not included in the map. She explained that she was concerned regarding the Wilson's Plover and Snowy Plover chicks because they foraged in the lagoon. She listed the protected species that utilize the habitat year-round. Mr. Cornell entered the letter from the FWC into the record.

Council Member King questioned what would happen if the private property owners decided not to participate with the FWC. Ms. Streker stated that the birds were protected regardless of the landowners. Council Member King questioned how far the proposed structure was from the roped-off area. Ms. Streker replied that in 2022, there were Snowy Plovers within a couple of feet of the proposed structure and the Colonial nesting was about 300 feet away.

Mr. Cornell discussed special exception number eight and the applicant's other options for beach access without building the proposed structure. He described harm to the species and the environment and Audubon requested that the Council deny the request. Ms. Streker described the CWA and noted the intent was to protect all species of birds.

Attorney Behn asked Mr. Cornell several questions concerning his and the FWC's involvement in a previous Audubon hearing. He asked Planner Propst questions regarding her experience with the town and whether she agreed with the dimensional criteria of the walkover. She reiterated that she was unable to review all the documentation. Attorney Behn encouraged the Council to review all the materials in front of them and he stood behind his testimony.

Council Member Veach questioned how he could call a 300-foot structure a dune walkover since it ended before the dune. Attorney Behn replied that the

code did not clearly distinguish between walkover and boardwalk and that the area was a dune beach system. He added that the state would tell them where to end the structure. Council Member Veach brought up safety issues concerning the lack of guardrails, especially for someone with mobility issues. Attorney Behn responded that it was part of their justification for the five-foot width and that it was a private facility. Council Member Veach questioned whether he was making an ADA claim that it was a compliance issue. Attorney Behn replied that the ADA issue was undecided and they were there under the zoning code standards. He added it was a fact that one of the applicants had trouble getting around. Council Member Veach questioned ongoing ownership issues with the state. Attorney Behn responded that they were moving forward under the assumption that the state owned the land and the applicants would continue to lease from the state. Council Member Veach brought up the structure being detrimental to the environment.

Attorney Behn disagreed and referred to the FDEP findings at the hearing. Council Member Veach pointed out that the former pier at the Leonardo Arms fell apart and created an obstruction. He wondered whether they would remove part of the structure if the beach eroded and Attorney Behn agreed the request was acceptable.

Council Member Woodson questioned whether Environmental Project Manager Chadd Chustz had any concerns. Project Manager Chustz did not disagree with the accretion rate as stated in the FDEP report. He acknowledged that he spoke with Mr. Rood regarding minimizing the structure.

Interim Town Manager Wilkins was sworn in and described his experience with the Deepwater Horizon disaster regarding negative impacts on the birds and environment.

Council Member Veach questioned whether the League of Cities insurance would cover the town if someone were to sue the town if the request was approved. Town Attorney Herin, Jr. replied negatively and explained why. He commented that the cost to the town regarding the applicants was less than \$10,000.00. Council Member King remarked that when he checked, the cost was over \$104,000.00 plus the cost of the annual liability insurance of \$300,000.00. Town Attorney Herin, Jr. responded that some of the expenses occurred before he was employed by the town. Council Member Veach questioned what it cost the town to defend the TPI lawsuit and Town Attorney Herin, Jr. thought it was around \$30,000.00 or less.

Public comment closed.

Town Attorney Herin, Jr. reviewed the quasi-judicial process and noted it was up to Council to make a decision. He commented that there was an initial court action that stated the property owners had to go through the special exception process to obtain approval to build the structure.

Council Member Veach brought up the conflict between the LPA and staff, compatibility with the environment without causing damage and the fact that Audubon spent time and effort advocating for the birds. He felt the request failed the test.

Council Member Woodson noted previous instances where the LPA and staff disagreed.

Council Member King understood both sides of the issue.

Mayor Allers read a portion of the final order regarding the boundaries of the CWA.

Council Member Veach understood the private property rights issue but noted that someone was building a private structure for private use on public property. Town Attorney Herin, Jr. remarked that the state gave the applicants the right to build the structure across state land. He questioned whether the Council wanted to impose conditions if they approved the request and whether Council wanted the applicants to reiterate and confirm their prior public statements regarding the dismissal of pending litigation and threats of litigation.

Council Member King moved to approve Resolution 23-22; second by Council Member Woodson.

Motion carried 3-2 by roll call vote with Vice Mayor Atterholt and Council Member Veach dissenting.

Eddie Rood, applicant, stated that they would not appeal the ADA decision and they were willing to accept the lease with the state and drop the ownership lawsuit and the Bert Harris issue. He thanked Council.

XII. ADMINISTRATIVE AGENDA

No items.

XIII. FINAL PUBLIC COMMENT

No comment.

XIV. TOWN MANAGER'S ITEMS

Interim Town Manager Wilkins stated that Steve Poposki accepted the Director of Community Development position. The emergency berm project was delayed until early May. Leadership Lee was meeting in Town Hall on Friday. Ten tons of dead fish have been removed so far, with three more tons scheduled to be removed today and the stormwater system cleanout was underway.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Atterholt reported that the beach school ad hoc group was trying to assemble language for an interlocal agreement. He asked that the Council give the Town Attorney and interim Town Manager the authority to move forward with negotiations and bring back a product for the meeting on March 20, 2023. Mayor Allers was concerned about the Bay Oaks project and reimbursement from FEMA,

but he supported negotiations. Town Attorney Herin, Jr. stated that they would have to determine how the existing interlocal agreements with the school board would be affected by new agreements. Council Member Veach questioned whether Council could receive a detailed presentation on the issue by Thursday's meeting. Vice Mayor Atterholt responded that they were waiting for a response from the school board, but he would provide whatever information was available. Council Member King indicated the MPO (Metropolitan Planning Organization) still needed a citizen to participate in the meetings.

Mayor Allers noted that Commissioner Ruane received approval from the County Commission to start the Lee County Recovery Task Force with Mayors or elected officials. He had concerns about participating due to Sunshine Laws and restrictions regarding contacting other officials. Council Member Veach volunteered to participate, and Council Member Woodson volunteered to fill the alternate position.

No items from other members.

XVII. ADJOURNMENT

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

The meeting was adjourned at 2:42 p.m.

Minutes adopted, March 20, 2023; Motion by Council Member King and seconded by Council Member Woodson. Passed 5-0.



Amy Baker, Town Clerk