



Fort Myers Beach Town Council

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

Minutes

Monday, May 1, 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 approve the final agenda; second by Council Member Woodson.
Motion carried unanimously.

V. PUBLIC COMMENT

Cindy Johnson, resident, discussed the bright white lights on Estero and noted the FWC (Fish & Wildlife Conservation Commission) did not approve the installation of those lights. She stated that it was unfortunate that the lights were installed and played a recording regarding shielding white and amber lights.

Steve Johnson, resident, brought up white lights versus amber lights and described the history of lighting studies. He stated that the white lights were not compliant and brought up legal penalties for harming the turtles.

Jennifer Rusk, resident, had contacted the Treasure Island police department regarding their amber lights and reported that they had no problems with them. She read the FPL (Florida Power & Light) pledge regarding protecting wildlife and habitat. She asked that the town and FPL follow the state guidelines and use amber lights in addition to shielding.

Mary Rose Spalletta, resident, opposed white lights on Estero Blvd. at any time of the year. She discussed light management and safety for both humans and wildlife. She did not support temporary white lights.

Leah Gregg, resident, noted that Eric Culling from FPL stated that properly shielding amber fixtures would meet FWC requirements and would not need to be turned off. Shielding the current lighting fixtures would not meet FWC requirements and would have to be turned off. She read data from studies disputing the safety of bright white lights. She noted the town was responsible for using the lights required by law.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach stated today was the official start of sea turtle nesting season. He felt the insurance village event was impactful.

Council Member Woodson acknowledged Beach Talk Radio and their back pack event at Snug Harbor for the children's foundation. She thanked everyone who contributed. Vice Mayor Atterholt discovered old advisory committee placards in the town hall wreckage and read off the names so people could pick them up if they desired. Town Clerk Baker will have them at the temporary town hall.

Council Member King welcomed Town Manager Hyatt and thanked Interim Town Managers Wilkins and Holley.

Mayor Allers welcomed Town Manager Hyatt.

A. Proclamation: Safe Boating Week 2023

Mayor Allers read the proclamation. Greg Masonick from the US Coast Guard stated the Coast Guard was there to assist the town and thanked Mayor Allers for the proclamation. Dan Easton thanked the town for recognizing the importance of the week and the importance of wearing a life jacket.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Steve Johnson, Chair of MERTF (Marine & Environmental Resources Task Force), reported that the artificial reef from the Big Carlos Bridge rubble would be located four miles northwest of the pass in about 25 feet of water. The fishing pier would be accessed on the Lovers Key side with full access. Council Member Woodson added that the north entrance would be blocked off during construction.

VIII. APPROVAL OF MINUTES

A. Town Council April 17, 2023

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

Motion carried unanimously.

IX. PRESENTATION

A. Presentation: Florida Power & Light (FPL)

Mayor Allers clarified that the town requested funds for an all-amber solution from the legislature.

Charlotte Miller of FPL External Affairs stated that FPL was committed to preserving the environment and sea turtles. She noted they were there to present a temporary solution until the amber light appropriation dollars were

approved. She described the lighting situation after the hurricane and noted the sodium lights were replaced with LED lights; however, the locations were the same. Eric Culling from the FPL Lighting Services Group commented that amber options were available when the LED lights were installed but did not meet the town's standards.

Mr. Culling distributed a handout and presented two options. He indicated there were a total of 131 locations on Estero Blvd. and 88 were replaced. The first option was a no-cost upfront change to the existing amber LED fixture approved by the FWC and in the FPL tariff catalog. He provided a breakdown of a per-month increase of \$113.00 for 131 units. The second option was to provide shielding for the existing lights and additional shielding for the remainder of the 131 units. He described the difference in lumen output between the LED and amber lights.

He did not consider that shielding the existing white lights would comply with state regulations. The amber option presented would have to be shielded on the beachside. He described the difference between high-pressure sodium lights and LED amber lights. He stated that FPL would replace all existing fixtures with amber fixtures at no upfront cost to the town.

Interim Town Manager Wilkins thanked Cindy Johnson for putting him in touch with a biologist from FWC. The biologist told him that neither shielded white nor unshielded amber lights were compliant. Sea turtle disorientations were reported to the FWC and the offending light would be turned off immediately. She was aware of the difficult situation this year.

Vice Mayor Atterholt questioned whether filling in all the lights with amber fixtures would offset the brighter white lights. Mr. Culling replied that uniformity was very important and would assist in putting light where there was none.

He indicated it would take until turtle season 2024 to complete the final amber lighting on Estero Blvd. if appropriations were approved. He was confident he could install 131 amber fixtures by June 1, 2023.

Mayor Allers stated that the \$7.9 million lighting system would be town-owned and include FPL maintenance for 10 years. Mr. Culling verified that the cost included new poles. Council Member Veach brought up burying the lines and Mr. Culling confirmed the system would be underground.

Council Member Woodson verified that the interim solution was to put amber fixtures on 131 poles with temporary amber lights. Mr. Culling indicated the difference between the temporary amber lights and the new amber lights was the lumen outputs.

Vice Mayor Atterholt supported an all-amber solution that was compliant with state regulations.

Council Member Woodson was in favor of the temporary solution.

Council Member Veach concurred and noted the lights would not be as bright as the final fixture.

Council Member King was on board.

Mayor Allers stated that it was important for people to know that it would not be nearly as bright on Estero Blvd. and to be careful.

X. CONSENT AGENDA

Council Member Veach moved to approve the consent agenda; second by Mayor Allers.

Motion carried unanimously.

A. FL Sea Grant letter of support

Council Member Veach moved to approve support for research funding; second by Mayor Allers.

Motion carried unanimously.

B. Resolutions 23-37 through 23-43; Extension of State of Local Emergency

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 resolution; second by Mayor Allers.

Motion carried unanimously.

C. Resolution 23-41 Matanzas Pass Bridge Maintenance Agreement

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A MAINTENANCE AGREEMENT FOR THE MATANZAS PASS BRIDGE BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE TOWN; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN AND AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE AGREEMENT; PROVIDING FOR SEVERABILITY; AND AN EFFECTIVE DATE.

Council Member Veach moved to approve the resolution; second by Mayor Allers.

Motion carried unanimously.

D. FMB Elementary Spring Music Performance

Special Event - FMB Elementary Spring Music Performance

Council Member Veach moved to approve the special request; second by Mayor Allers.

Motion carried unanimously.

XI. PUBLIC HEARINGS**A. Ordinance 23-05; Temporary Housing**

1st Reading and public hearing for 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 May 15, 2023 at 9:00 AM

Mayor Allers read the title of the ordinance. Town Attorney Herin, Jr. noted that the LPA (Local Planning Agency) unanimously recommended approval of the ordinance. He pointed out that the Town Council would have to vote by super majority to schedule the second reading at 9:00 a.m. instead of after 5:00 p.m. as required by state law.

No public comment.

Council Member Woodson questioned whether there was a provision to extend the time a property owner could keep trailers on their property. Town Attorney Herin, Jr. replied affirmatively and noted that homeowners had to prove they were moving forward to receive an extension. One trailer per lot was allowed, but people with larger parcels could request a waiver to accommodate additional units. Council Member Woodson questioned whether the units could be rented out to people. Town Attorney Herin, Jr. replied that the intent was for the trailers to be owner-occupied only. The ordinance provided a sunset provision 18 months from the effective date.

Town Attorney Herin, Jr. will monitor the state legislature's activities regarding the ordinance.

Council Member Woodson questioned whether the town was enforcing how many RVs were on private property. Interim Town Manager replied affirmatively.

Council Member King moved Ordinance 23-05 to a second reading on May 15, 2023; second by Council Member Woodson.

Motion carried unanimously by roll call vote.

Council Member Woodson moved that the second reading on May 15, 2023, will be held at 9:00 a.m.; second by Council Member King.

Motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

- A. Resolution 23-44; Community Development Staffing and Related Budget Adjustment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING BUDGET AMENDMENT #1 TO THE TOWN'S ADOPTED FISCAL YEAR 2022-3023 BUDGET, ATTACHED AS EXHIBIT "A"; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Finance Director Joe Onzick stated that since the town had an increase in permit revenue, code enforcement was moved out of the general fund into the building fund where permanent revenue would fund it. He explained the adjustments to the one-page color-coded summary of the general and building funds. He noted a net change of zero within the general fund and explained the change in the building fund. He stated that the revenue covered a fully staffed functional permitting department and when the permit revenue dropped, staff would be adjusted. He confirmed that insourcing personnel were covered in the figure. Community Development Director Steve Poposki explained that the in-house shift from outsourcing was included in the increased revenue projections. He stated that he included a list of personnel he would like to hire to provide faster and better service.

Vice Mayor Atterholt questioned whether inspectors were considered in the enforcement division or whether they were considered in-house in the permitting division. Director Poposki replied that they were in the general fund because they also responded to non-building code violations. He indicated that they were solving three problems. The town's level of service would be enhanced, code was shifted into the building division because they are enforcing the building code and they would ensure they had enough resources to accomplish the task. Interim Town Manager Wilkins added that the fees were legally restricted to supporting building permits.

Director Poposki stated he would recruit for the positions immediately, but finding skilled and licensed people for permits and plan review would take time. He noted that two new employees started this morning and two more were expected in another week. One of his goals was to provide more consultation with homeowners to prevent applications from being resubmitted several times.

Council Member Veach moved to approve the resolution; second by Council Member Woodson.

Motion carried unanimously.

- B. Resolution 23-33; Florida Department of Economic Opportunity (DEO) Emergency Bridge Loan

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE EXECUTION AND DELIVERY OF THE FORM OF ATTACHED LOAN DOCUMENTS BETWEEN THE LOCAL GOVERNMENT AND THE STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY FOR A PRINCIPAL AMOUNT OF \$11,900,000 TO FUND GOVERNMENTAL OPERATIONS; MAKING CERTAIN FINDINGS OF PARAMOUNT PUBLIC PURPOSE; COVENANTING TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO PAY THE INDEBTEDNESS; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE PROMISSORY NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; DESIGNATING AN OFFICIAL WITH AUTHORITY TO EXECUTE DOCUMENTS WITH RESPECT TO THE LOAN; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Interim Town Manager Holley explained what was happening in the state legislature regarding appropriations and a new program through the DEM (Department of Emergency Management) for revenue replacement. The program allowed the state to fund the town's needs and if money came in from another source, the town would reimburse the state funds.

Vice Mayor Atterholt questioned how the town would prioritize and differentiate between the town's needs and state and county applications for funds. Interim Town Manager Holley responded that interim Town Manager Wilkins was working with Tidal Basin regarding long-term planning and priorities. He stated it would take a lot of work and planned to meet with Tidal Basin in the afternoon. Vice Mayor Atterholt encouraged Council members to consider extending the consulting services with Mr. Holley and Mr. Wilkins.

Vice Mayor Atterholt moved to approve the resolution; second by Mayor Allers.

Motion carried unanimously.

- C. RFQ-22-25-AD; Ongoing Misc. Professional Services

Approve and authorize the Town Manager to execute contracts with the top ranked firms under each category for Ongoing Miscellaneous Professional Services.

Interim Town Manager Wilkins noted the top five under each category were recommended to be retained for three years on professional service agreements.

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

Motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

Terry Persaud, resident and business owner, stated that he had not received a response from the town regarding his settlement offer. He noted that the federal court ordered mediation on May 15, 2023. He pointed out that most of the fines were in dispute and hoped they could reach an agreement in mediation.

XIV. TOWN MANAGER'S ITEMS

Interim Town Manager Holley welcomed Mr. Hyatt. He reported that the town was awarded a \$10 million grant for the stormwater, which Tidal Basin administered. He noted that the money would supplement the \$60 million loan. The next M&P will include presentations from FEMA, Tidal Basin and Resilient Lee to kick off visions for the island.

Interim Town Manager Wilkins thanked the council and felt Mr. Hyatt would do a great job.

Town Manager Hyatt talked about improvements, transparency and a great opportunity.

Vice Mayor Atterholt discussed extending the contract in some capacity for Mr. Holley and Mr. Wilkins. Mayor Allers stated that the decision had to be between the three men. Vice Mayor Atterholt strongly supported a continued partnership because he did not feel one person could do what needed to be done. Council Member King agreed with Mayor Allers and suggested hiring a grant writer to secure funds. Council Member Veach felt that it was important for Mr. Hyatt to be in charge as the new town manager, but he supported any agreement Town Manager Hyatt wanted. Council Member Woodson suggested that they look at a consultant arrangement based on upcoming projects for the next 60-90 days.

Mayor Allers stated that they hired Town Manager Hyatt for a reason and he was comfortable with the three of them discussing their needs. Town Manager Hyatt acknowledged it would take some time to get up to speed and was open to a conversation with the interim managers.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. congratulated Mr. Holley and Mr. Wilkins for their help. He noted the town continued to work with the Lee County School Board regarding the beach elementary school. He received an updated draft of the interlocal agreement and will have it for the Town Council's review by the next meeting. Vice Mayor Atterholt added behind-the-scenes details.

Town Attorney Herin, Jr. reported that the Rood and Kroemer lawsuit had been dismissed and he was still waiting for confirmation that the Bert Harris claim was dismissed.

Town Attorney Herin, Jr. stated that he was putting a directive together to present to Mr. Persaud's attorney and would keep the council updated.

The Audubon appeal was filed, and he explained the procedural quirk before the lawsuit was back in the town's lap. It was anticipated that the town would file a joint response with Mr. Rood and Mr. Kroemer's attorney.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Veach brought up the block grant and Resilient Lee. The consultants encouraged people to think big and he noted that the grant had a housing angle to it. He mentioned burying power lines and things that would make the town stronger and more resilient, like hardened cell towers and backup power. He noted there were a lot of opportunities for the town. Vice Mayor Atterholt suggested that Council Member Veach come up with a strategy so everyone was on the same page going forward. Council Member Veach said they should discuss a strategy at their next M&P session. He brought up all the different grants available with different streams and restrictions and if Tidal Basin was not managing that aspect, someone should be hired to follow through. He suggested that people be allowed to attend the Resilient Lee meeting virtually and he would meet with the Communications Coordinator to alert the public of the meeting. He noted that Sanibel purchased new software for their building department and suggested the town look into the software. Interim Town Manager Holley responded that they were looking at new software programs for three departments. He reminded everyone of the Resilient Lee meeting on Thursday from 6-8 p.m. at DiamondHead regarding the town's future.

Council Member Woodson felt it was important to carry the Thursday evening meeting live and make it available to everyone not in town. She stated many streets were underwater after light rain or high tide, especially Bahia Via. She asked whether those areas would be addressed. Interim Town Manager Holley replied that they were currently cleaning out the sand in the system and it should be completed by early June. He will provide an activity report. Council Member Woodson suggested updating the town's mission statement to reflect the cultural change of the town. Town Manager Hyatt noted he would ensure the Resilient Lee meeting was broadcast.

Vice Mayor Atterholt agreed with a new mission statement. Best Western asked when they would receive the sand for the emergency berm. Environmental Project Manager Chadd Chustz responded that the north side of the beach was not funded because it was categorized as an engineered beach and did not qualify. They should receive sand in the fall during the renourishment project.

Vice Mayor Atterholt questioned when the scours outside the emergency berm would be filled. Project Manager Chustz revealed that several projects were applied for, including an emergency berm on the north end and sand for the Big Carlos Pass. He deferred to Coastal Engineering.

Culture, Parks & Recreation Director Jeff Hauge stated that the TDC (Tourist Development Council) approved most of their funding requests. The tiki huts will be replaced and temporary restrooms added, but he did not know the status of the new building.

Council Member King questioned the status of the porta-potties that were zip-tied. Interim Town Manager Holley received support to change contractors. Interim Town Manager Holley explained that the fire department did not do anything different regarding Bay Oaks and it was the town's fault the plans were not in-house. He noted DRMP would do the architectural renderings for the fire department. The project was delayed by about 4.5 months.

Mayor Allers indicated the Florida League of Cities requested nominations for secretary. Council Member King will look into the details of the position and get back to Mayor Allers. Mayor Allers agreed to attend the Tampa Bay Regional Resiliency Summit on May 4, 2023, but he thought the meeting was on May 5. He will contact the director concerning sending a replacement.

Town Attorney Herin, Jr. noted he would be out of town from May 18 through May 24, 2023, to attend his son's college graduation. He added that he would be available by email or phone if there was an emergency.

XVII. ADJOURNMENT

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

The meeting was adjourned at 11:58 a.m.

Minutes adopted, May 15, 2023; Motion by Council Member King and seconded by Council Member Woodson. Passed 5-0.



Amy Baker, Town Clerk