



Fort Myers Beach Town Council

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

Minutes

Monday, June 5, 2023

9:00 AM

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member Veach moved to approve the consent agenda with all items pulled for discussion; second by Council Member King.
Motion carried unanimously.

V. PUBLIC COMMENT

State Representative Adam Botana reported that \$117 million was available for District 80, which included the Town of Fort Myers Beach. The funds could be used for a new town hall and turtle lights, among other projects. The \$350 million pot he referred to was from the state for recovery due to hurricanes Ian and Nicole and would be available July 1, 2023. Mr. Botana noted that more funds would be available through Resilient Lee and he assured the Council that the state was there to help with revenue replacement. He stated his office would be very involved with the town every step of the way and encouraged the Council to call him with concerns or questions.

Linda Miller thanked the Council for their hard work with recovery. Before the hurricane, Ms. Miller ran the farmer's markets at Beach Baptist and Santini Plaza. She requested support for a farmer's market under the bridge.

Mary Rose Spalletta, resident, objected to the town's continued involvement in the Audubon vs. the boardwalk lawsuit. She stated that the Audubon case was very strong, and the town's resources could be used for redevelopment. She requested that the boardwalk ordinance be rescinded as soon as possible.

Tony Mauriello is a lead instructor from the University of Florida Master Naturalist program and collaborator with Lover's Key State Park. He described the Master Naturalist program and the nesting birds on the beach. He did not support the boardwalk and urged the Council to reconsider its decision.

Wendy Herin objected to the 350-foot bridge and noted the area was designated as critical for a reason.

Cindy Johnson, resident, shared a story from an acquaintance regarding their lack of wildlife information. She requested that more information be available to the public regarding protecting the birds and turtles.

Jennifer Rusk, resident, reported that the Community Foundation had donated 5,000.00 for the MERTF pop-up events. She stated that the beach kids from the Bay Oaks summer camp would help develop an activity book for future pop-up events. She felt the boardwalk would ruin the beach and others would want one. She thought it was irresponsible to push through the permit when residents and business owners were waiting for permits to rebuild their homes and businesses. She requested that they rescind their boardwalk decision.

Steve Johnson, resident, expressed his displeasure at allowing the 350-foot boardwalk. He stated it was an encroachment that helped only Mr. Rood and Mr. Kroemer. He indicated the Council's job was to protect threatened species and the public interest. He reviewed statements made by Council members regarding the boardwalk. He added that putting a structure in the buffer to protect the beach was neither right nor fair.

Town Clerk Baker read several emails into the public record opposing the walkover and one email discussed climate change and recycling.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach thanked Representative Adam Botana and the legislators.

Council Member Woodson mentioned businesses recently opened.

Council Member King congratulated Don Hanyo on his retirement from Fort Myers Beach.

Mayor Allers also congratulated Don.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

VIII. APPROVAL OF MINUTES

A. Town Council May 15, 2023

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

Motion carried unanimously.

IX. CONSENT AGENDA

A. Farmers Market

Special Event - Farmers Market Under the Bridge.

Council Member Veach suggested having the farmer's market in Times Square instead of under the bridge. Mayor Allers questioned whether the market would be in the way of projects. Ms. Miller was open to the idea. Mayor Allers mentioned holding it at the Lynn Hall parking lot. Council Member Woodson added that Bayside Park would be open soon. Ms. Miller replied that there was not enough room at that location. She will work with staff regarding Times Square and Mayor Allers will contact Lee County concerning the parking lot at Lynn Hall.

Council Member Veach moved to table item A for the next Town Council meeting; second by Council Member Atterholt.

Motion carried unanimously.

B. Resolution 23-52 Heavy Equipment Purchase

Motion to approve Resolution 23-52 entitled: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK CONTRACT BETWEEN THE TOWN AND CREEL TRACTOR COMPANY. IN AN AMOUNT NOT TO EXCEED \$108,416.46, UTILIZING SOURCEWELL CONTRACT 031121, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT, EXPEND FUNDS, AND TAKE ALL APPROPRIATE ACTIONS TO PURCHASE A REPLACEMENT TRACTOR; AND PROVIDING FOR AN EFFECTIVE DATE.

Public Works Director Jason Freeman explained where the money would come from to cover the purchase.

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

Motion carried unanimously.

C. Authorize Town Manager to approve Coastal Engineering Consultants, Inc. STA# 4 for Contract RFQ-21-09-EN to monitor shorebird nesting for the Emergency Berm Project.

Motion to authorize the Town Manager to approve Coastal Engineering Consultants, Inc. STA# 4 for Contract RFQ-21-09-EN to monitor shorebird nesting for the Emergency Berm Project.

Council Member King questioned whether the funds were coming from the town or FEMA. Alyza Supriana from Tidal Basin replied that it was reimbursable from FEMA. Environmental Project Manager Chadd Chustz stated that Coastal Engineering was approved by the FWC (Fish & Wildlife Conservation Commission) to monitor shorebird nesting.

He described delays with the emergency berm due to shorebird nesting and added that property owners could request the emergency berm after the nesting was complete.

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

Motion carried unanimously.

D. RFQ-20-22-AD, STA #8

Motion to approve STA #8 authorizing the appropriation of additional funds for Axis International to continue to provide planning and zoning professional services.

Council Member Woodson questioned whether they needed as many people. Community Development Planner Sarah Propst stated that the funds covered two senior planners and one younger planner working behind the scenes. She noted they were only taking on what was assigned, and Jason Green was not required to attend council meetings.

Council Member Woodson moved to move the item to the June 20, 2023, meeting for input from the Town Manager; second by Council Member King. Council Member Veach stated that approving the STA had nothing to do with the mixture of planners. Planner Propst indicated the current STA was out of money.

Council Member Woodson amended her motion to continue to pay the contract for two weeks until the Council makes a decision on the contract; second by Council Member King.

Motion carried 4-1, with Council Member Veach dissenting.

X. PUBLIC HEARINGS

A. Ordinance 23-08; Parallelogram Lot Setbacks

Final Reading and Public Hearing on proposed Ordinance 23-08 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, ADDING SECTIONS 34-269 PARALLELOGRAM LOT SETBACKS, AND ASSOCIATED DEFINITIONS IN CHAPTER 34, ARTICLE I., SECTION 34-2 DEFINITIONS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Planner Propst reviewed the proposed ordinance with a PowerPoint presentation. Slides included Parallelogram Lots and Proposed Ordinance Amendments. Town Attorney Herin, Jr. stated that the hearing was properly advertised.

Council Member Veach moved to approve the ordinance, second by Council Member Woodson.

Motion carried unanimously by roll call vote.

B. Ordinance 23-10; Olde Seaport CPD and MCP Amendment

First reading and Public Hearing on proposed Ordinance 23-10 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 17-39, AND AMENDING THE AREA FOR CONSUMPTION ON PREMISES AND THE MASTER CONCEPT PLAN FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 645 OLD SAN CARLOS 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 June 20, 2023 at 9:00 a.m.

Mayor Allers read the title of the ordinance. Planner Propst reviewed the request as stated on the blue sheet. Town Attorney Herin, Jr. swore in those providing testimony.

Applicant Jim Figuerado explained why he wanted to make changes to his property. He noted that the covered walkway protected customers going to and from the restaurant. He indicated he had a DEP (Department of Environmental Protection) submerged land lease and that area would not change. He described the history of Snug Harbor.

No public comment.

Council Member Woodson moved to send it to a second reading on June 20, 2023, at 9:00 a.m.; second by Council Member Atterholt.

Motion carried unanimously.

C. Ordinance 23-11; Setbacks for residential uses in nonresidential districts

First Reading and Public Hearing on proposed Ordinance 23-11 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SUBDIVISION II. DOWNTOWN ZONING DISTRICT, SECTION 34-674 BUILDING PLACEMENT; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on June 20, 2023 at 9:00 a.m.

Mayor Allers read the title of the ordinance. Planner Propst reviewed the proposed ordinance with a PowerPoint presentation. The slides addressed Residential Setbacks in Commercial Districts with examples.

No public comment.

Mayor Allers moved to schedule for second reading on June 20, 2023, at 9:00 a.m.; second by Council Member King.
Motion carried unanimously.

- D. Ordinance 23-12; Amending side setbacks for lots less than 50 feet wide
First Reading and Public Hearing on proposed Ordinance 23-12 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on June 20, 2023 at 9:00 a.m.

Mayor Allers read the title of the ordinance. Planner Propst reviewed the proposed ordinance. (The recording skipped part of the conversation.) This would allow lots less than 50 feet to have a 6.5-foot setback with no additional criteria. The LPA (Local Planning Agency) unanimously recommended the proposed ordinance. Planner Propst noted that the fire department was consulted regarding fire flow testing. The 6.5-foot setback was to the body of the building, not the overhang.

Public comment:

Samir Malbia from Homebound stated that 150 parallelogram lots would benefit from the proposed ordinance and indicated that most homes were 32 feet wide.

Scott Safford, LPA member and resident, noted the LPA initially considered a 5-foot setback, but after talking to the fire department, a 6-5-foot setback was agreed upon.

Public comment closed.

Council Member Veach stated that a 30-foot-wide house was pretty standard and buildable. He expressed concerns regarding how close the homes would be to each other and potential massing. He did not think changing the code to benefit one builder was a good idea. Mr. Malbia confirmed his minimum width plan was 32 feet, but he said other builders had 32 feet-wide plans too. Council Member Veach thought that the setbacks were getting more complicated. Planner Propst explained that the proposed lot width was less complex and fairer now. Mr. Malbia described his home plans. Vice Mayor Atterholt felt it was a unique situation and a reasonable compromise.

Vice Mayor Atterholt moved to approve the proposed ordinance and send it to a second hearing on June 20, 2023, at 9:00 a.m.; second by Council Member Woodson.

Council Member Veach questioned whether the Council agreed with adding a requirement that the bottom floor remains open. Planner Propst indicated that staff could add a note to the properties that the ground floor could not be enclosed. Council Member Woodson did not agree with the requirement. Vice Mayor Atterholt felt it was a nice fix and he would like to keep his motion the same.

Motion carried unanimously.

XI. ADMINISTRATIVE AGENDA

No items.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Acting Director Freeman congratulated Don Hanyo for almost 20 years with the town. The code red system was tested two weeks ago, and he encouraged everyone to sign up for emergency notification systems. He brought up the Trust for Public Land brochure and felt it was a great opportunity for land acquisition. He described the program and noted it helped facilitate the process of acquiring land. Ms. Supriana noted that Tidal Basin would look into the program to ensure no benefits were duplicated. She confirmed that three property owners applied for the hazard mitigation grant and the deadline was extended to August. Director Freeman received support to move forward with the Trust for Public Land program.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. addressed the appeal filed by the Audubon Society and recommended that the town wait until the appeal was disposed of before permits were issued. By moving forward before the appeal was disposed of, the town could expose itself to liability. Council Member Veach questioned whether an option was available to reconsider the special exception. Town Attorney Herin, Jr. responded affirmatively and indicated he could provide the section of code that addressed the process. He stated that he received direction from Council to draft a letter of indemnification at the last meeting and he did so. He noted the letter provided the maximum protection for the town, but he did not know whether Mr. Rood and Mr. Kroemer would accept the letter. He added that there was no guarantee that there would not be additional litigation after the letter was signed. He requested direction concerning whether Council wanted him to forward the letter to Mr. Rood and Mr. Kroemer's attorneys. He explained the appeal process and stated the judge still had not issued a rule to show cause. Town Attorney Herin, Jr. did not know how long it would take the judge to rule or how long the process would take. He used the Margaritaville litigation timeline as an example. He explained how the town could be affected by additional litigation on the back end if the defendants lost their appeal, and right now, they were only dealing with

one piece of litigation. He stated that once the appeal was resolved, the town would have a clearer picture of how to proceed, but they were at risk in the meantime. He reiterated that it would be safer for the town to wait until it was non-appealable.

Council Members King and Woodson supported sending the letter along with Vice Mayor Atterholt. Town Attorney Herin, Jr. will send the letter and keep the Council apprised. Council Member Veach thought sending the letter put more risk to the town and felt they should not issue the permit until the appeal was disposed of. Mayor Allers did not support sending the letter.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King reported that he was elected secretary to the Southwest Florida League of Cities. The position starts in August and the term runs for one year.

Vice Mayor Atterholt requested permission to allow the Estero Island small business group to meet with them at their next M&P Session regarding how to help small businesses prosper. All members supported the request. Vice Mayor Atterholt commented on the sidewalks on Estero Blvd. and suggested they schedule a time to clean the sidewalks. He described his Tidy Up Tuesdays plan regarding picking up debris and sweeping the sand off sidewalks throughout the town. He suggested that most staff pitch in to solve the problem. Council Member Veach noted parking was an issue at the south end and suggested working with Keep Lee County Beautiful. Vice Mayor Atterholt wanted the town staff to be involved and interact with residents. He agreed with including volunteers from Keep Lee County Beautiful.

Council Member Woodson loved the idea and noted there was a canal and Mound House cleanup this weekend sponsored by the Chamber and Keep Lee County Beautiful. She visited the east coast and described elements at Lauderdale by the Sea that could be incorporated into the town's rebuild. She addressed her time on the LPA and felt the current Council was better at listening to the LPA. Council Member Veach noted that hurricane season had started and suggested that people put a sign on the door stating they were not home so their door would not be broken down. Resilient Lee was addressing creating resilient hubs. He discussed updating the comprehensive plan and suggested that staff develop a schedule to implement commercial nodes to start providing clarity to the community. Mayor Allers and Council Member Woodson agreed. Council Member Veach encouraged condos to contact him if they could provide parking for Keep Lee County Beautiful volunteers.

Mayor Allers commented that he was unaware that a school was cleaning up the beach over the weekend. Greg from the Beach Bar asked to be notified in the future so he could host events for volunteers. Mayor Allers suggested replacing the greenery on Estero Blvd. and partnering with the Garden Club or other organizations. He received support to move forward with his idea. Director Freeman will contact Lee County regarding Tuesday cleanups. Council Member Veach suggested finding grant money to buy native plants for neighborhoods and Estero Blvd. Mayor Allers brought up revisiting uniformity on Estero Blvd. to allow some color and creativity. He described how businesses decorated light poles in

Dunedin. Council Member Veach brought up raising money for mailboxes and allowing volunteers to paint them. Mayor Allers suggested that Council Member Veach contact Heidi at FMB Strong. He reminded residents to not only prepare for a storm but to prepare for it after it hits.

XVI. ADJOURNMENT

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

The meeting was adjourned at 12:29 p.m.

Minutes adopted, June 20, 2023; Motion by Council Member King and seconded by Mayor Allers. Passed 5-0.



Amy Baker, Town Clerk