Fort Myers Beach Town Council

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

Minutes **Monday, August 7, 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

The recording started with Mayor Allers discussing allowing testimony via phone. Consensus was reached to decide on a case-by-case basis and both parties would be allowed to comment via phone.

Council Member King moved to approve the final agenda; second by Council Member Woodson.
Motion carried unanimously.

V. PUBLIC COMMENT

Amy Loughrey, resident, apologized for taking up the town's time regarding their garage. She thanked the town for releasing the press release with accurate information and thanked the staff for their help. She described the community and thanked everyone.
Mark Ludwigson, resident and licensed contractor, discussed Amy and Rick Loughrey;s garage issue. He inspected the garage and stated it was only attached to the house by a piece of flashing and there was no permanent attachment. He suggested they get more opinions from professionals.
Ed Rood, resident, thanked the Town Council for standing behind their decision. The neighbors formed a group called The Friends of Little Estero Island. He stated the FWC (Fish & Wildlife Conservation Commission) supported their dune

walkover.
Becky Guidry, resident, received a violation regarding a stone landfill without a permit and was contesting it. She described her experience and asked that someone explain the situation to her.
John Dussliere, resident, donated photos on aluminum that he took of the pier.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked Beach Talk Radio for the Fourth of July event and clean-up. He sent condolences to Ed and Kim Ryan regarding the loss of Ed's brother. He attended Jim Rodwell's memorial service and noted his service to the country and town. He congratulated Scott Wirth on his new position as Fire Chief.
Vice Mayor Atterholt stated there was no animus towards Amy or Rick and they had every right to petition the government for grievances.
Council Member Woodson wished the Loughrey's all the best. She indicated she was gone for a month and noted all the progress made on the island when she returned.
Council Member Veach discussed Jim Rodwell's life and commented that he improved many people's lives. He appreciated what the Loughrey's were going through and added that the Town Council ~~could give them a variance to remedy the issue~~.could have given a variance for an accessory structure between the house and the street.***amended at August 21, 2023 meeting** He described and thanked the volunteers who were rescuing turtles. Mayor Allers agreed that Mr. Rodwell left the world a better place. He congratulated Scott Wirth on his official appointment and looked forward to working with him. He gave credit to town staff and the residents for continuing to work together and keeping communication open.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Steve Johnson, MERTF (Marine and Environmental Resources Task Force) Chair, displayed an award presented to Lee County Extension for the Master Gardeners who were responsible for the vegetation project organized by MERTF and Rose Larkin. MERTF unanimously voted to correct the record regarding false allegations made by Council Member King during the Council meeting on June 20 concerning the MERTF conversation on June 14. He reviewed the allegations and stated no names were mentioned and no one was disparaged. He stated there were two witnesses, photos and a video of the raking activity he described at the meeting. He discussed how people were hurt by the allegations. He requested that Council Member King watch the recording of the meeting. He thanked the Council for allowing him to correct the record. Mayor Allers stated the issue should be dealt with privately, but he would not prevent anyone from speaking. Council Member King defended himself.

VIII. PRESENTATION

A. Evergreen Solutions

Compensation and Classification Study

Karl Fuchs, Senior Consultant of Evergreen Solutions, utilized PowerPoint for his presentation. Slides include Overview; Study Goals; Employee Meetings Comments & Concerns; Current System Findings; Compression Analysis; Market Targets; Market Results; Key Recommendations and Implementation Options and Costs. Discussion was held regarding implementing a merit-based avenue for pay increases.

IX. APPROVAL OF MINUTES

A. Town Council June 20, 2023

Council Member King moved to approve the minutes; second by Mayor Allers.
Motion carried unanimously.

B. Management & Planning Session June 22, 2023

Council Member King moved to approve the minutes; second by Mayor Allers.
Motion carried unanimously.

C. Special Town Council June 26, 2023

Council Member King moved to approve the minutes; second by Mayor Allers.
Motion carried unanimously.

X. CONSENT AGENDA

Council Member Veach moved to approve the consent agenda; second by Council Member King.
Motion carried unanimously.

A. Resolutions 23-77 & 23-78: Extending Local State of 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 Council Member King.
Motion carried unanimously.

B. Resolution 23-79; BankUnited Signatory Authority

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY FLORIDA, AUTHORIZING TOWN OFFICIALS ACCESS AND AUTHORITY ON TOWN CERTIFICATES OF DEPOSIT(S) AND ANY OTHER TOWN ACCOUNTS WITH BANKUNITED: PROVIDING AN EFFECTIVE DATE.

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

C. Resolution 23-81; Florida Municipal Investment Trust

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY FLORIDA, AUTHORIZING TOWN OFFICIALS ACCESS AND AUTHORITY ON TOWN ACCOUNTS THROUGH THE FLORIDA MUNICIPAL INVESTMENT TRUST; PROVIDING AN EFFECTIVE DATE.

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

D. Resolution 23-83; Broadening Allowable Use of ARPA Funds

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE USE OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS FOR GOVERNMENT SERVICES AND INFRASTRUCTURE; AND PROVIDING FOR AN EFFECTIVE DATE.

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

E. Resolution 23-82; Purchase of Ford F-150 Trucks

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK CONTRACT BETWEEN THE TOWN AND SAM GALLOWAY FORD IN AN AMOUNT NOT TO EXCEED $120,000.00, UTILIZING LEE COUNTY CONTRACT 031121, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT, EXPEND FUNDS, AND TAKE ALL APPROPRIATE ACTIONS TO PURCHASE THREE F150'S FOR NEW HIRES OF BUILDING INSPECTORS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

F. ITB 23-10-AD Amended Contract Services

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A CHANGE ORDER TO THE CE GLEESON CONTRACT FOR ARCHITECTURAL DESIGN OF BAY OAKS REC CENTER; AND PROVIDING FOR AN EFFECTIVE DATE.

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

G. Beach Maintenance Lift Truck

Approving the direct purchase of a beach maintenance lift truck in the amount not to exceed $190,000 as budgeted in the Town and TDC Grant Request for the current fiscal year from TruckMax, waiving the Town's competitive procurement policies and procedures and authorizing the Town Manager to execute any purchasing documents.

Council Member Veach moved to approve; second by Council Member King. Motion carried unanimously.

H. Additional funds for Calvin, Giordano & Associates

Requesting approval to allocate additional building enterprise funds towards contractual services in the amount of $300,000. Contractual services include vendors such as Calvin, Giordano & Associates, who provide plans examining and building code inspection services for the Town of Fort Myers Beach. This allocation of funds is necessary to enable the Town to continue plans examining and inspecting operations for building permits for the remainder of FY2023.

Council Member Veach moved to approve; second by Council Member King. Motion carried unanimously.

I. RFQ-20-22-AD; Misc. On-Going Professional Services

Motion to approve STA #9 authorizing the appropriation of additional funds for Axis International to continue to provide planning and zoning professional services.

Council Member Veach moved to approve; second by Council Member King. Motion carried unanimously.

J. Use of Town's logo by FMB Community Foundation

Approve use of the Town's circular logo by the FMB Community Foundation for a fundraiser.

Council Member Veach moved to approve; second by Council Member King. Motion carried unanimously.

XI. PUBLIC HEARINGS

A. Ordinance 23-09; TPI FMB

Second Reading and Public Hearing on proposed Ordinance 23-09 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH ORDINANCE NO. 18-04, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-

0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Baker stated that the agenda items were properly advertised. Mayor Allers disclosed a conflict of interest and will complete the required paperwork to recuse himself. Town Attorney Vose commented that testimony by neighbors was allowed to provide fact-based testimony. She stated that decisions should be made based on what was presented at the hearing. Town Clerk Baker swore in those providing testimony. Mayor Allers read the title of the ordinance. Ex parte communications: Council Member King - emails from Tracey Gore and Joanne Shamp; Vice Mayor Atterholt - received emails from Tracey Gore and Joanne Shamp; Council Member Woodson - email from Joanne Shamp and conversation with someone else; Council Member Veach - met with Mr. Torgerson, toured the facility,
and received emails from Tracey Gore and Joanne Shamp and Mayor Allers - received emails from Tracey Gore and Joanne Shamp, met with the applicants and toured the property. Community Development Planner Sarah Propst and Senior Planner Jason Smalley were approved as experts.

Council Member Veach moved to accept Ms. Propst and Mr. Smalley as expert witnesses; second by Council Member ~~Veach~~ King. ***amended at August 21, 2023 meeting**

Motion carried unanimously.

Planner Propst reviewed the background of the ordinance as stated on the blue sheet. She noted that the town had received several letters of objection and the LPA (Local Planning Agency) recommended approval at their May 9, 2023 meeting.

Council Member Veach clarified the strike-out portions of item 14. Planner Propst stated that the applicant must come before the Council to request more density.

Attorney Steve Hartsell from Pavese Law Firm represented the applicant. Council members agreed they did not need to see the presentation again. Attorney Hartsell reviewed the applicant's request and reiterated that they were not asking for changes to the approved development plans and there were no plans to request additional density. He displayed a clean version of Revised Condition #14.

Tom Torgerson, applicant, explained that they were able to modify the construction of the restroom to fit within the property boundaries.

John Dammerman, applicant, assured Council that they had no plans to veer from the CPD (Commercial Planned Development).

Public comment:

Mike Miller, resident, supported the request. He questioned whether the parking lot donated to the town would remain where it is. He stated the parking lot was vital to businesses. He noted that no one else had the same restrictions the previous Council put on the applicant.

Public comment closed.
Attorney Hartsell stated that the parking lot had been conveyed to the town. Vice Mayor Atterholt explained why he supported the ordinance and noted they could not bind future Councils. Council Member Veach and Vice Mayor Atterholt discussed binding future Councils.

Council Member King moved to approve the ordinance; second by Vice Mayor Atterholt.

Motion carried 3-1, with Council Member Veach dissenting and Mayor Allers abstaining.

B. Resolution 23-80; SEZ 20230052 / 1249 Estero

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20230052 TO AMEND RESOLUTION 13-09 CONDITIONS OF APPROVAL WHICH LIMITED THE AREA OF CONSUMPTION ON PREMISES TO THE BUILDING AND DID NOT ALLOW LIVE MUSIC FOR THE PROPERTY LOCATED AT 1249 ESTERO BLVD.; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Ex parte communications: All Council Members received emails in opposition and Mayor Allers and Vice Mayor Atterholt visited the site.
Senior Planner Smalley reviewed the request as stated on the blue sheet. He noted that the LPA recommended a six-month limit on removal of the approvals and a reassessment in six months. They also recommended limitations regarding prohibiting drums and hours of operation. A handout of decibel levels during performances from June 16, 2023, through August 5, 2023, was entered into the record. Planner Smalley asked how the sound was measured and whether the meter was correctly calibrated.
Greg Montgomery, co-owner of The Whale, explained that they installed four 8x10 sound-absorbing panels on June 24, 2023. He measured the decibel levels throughout the performances. He stated that the decibel meter was calibrated and described where he took the readings. He discussed the difference between amplified and unamplified sounds. He was okay with prohibiting drum sets and said he would stay at 65 decibels throughout the afternoon and drop to 60 decibels after 10:00 p.m. He revealed that he received text messages and phone calls about the music before they were even open for business. Mr. Montgomery noted a 60.1% drop in sales during the eight weeks they did not play music on Thursday nights. He requested that they be allowed to play music until 8:00 p.m. or half an hour after sunset on weekdays.
Council Member Woodson supported allowing music until 8:30-9:00 p.m. on weekdays and 10:00 p.m. on weekends.

Public comment:
Bob Taborini, local musician and resident felt it was essential to reach an agreement because the music was very important to the community and visitors. He supported the request.
Brady Smith, resident and musician, described how proactive The Whale was in minimizing the sound. He supported the request and reiterated that places with music fared much better.
Patrick Duclos, resident, supported The Whale's request and requested that they be allowed to play amplified music. He stated he specifically moved to the downtown district because of the entertainment.
Mike Miller, resident, distributed a handout of emails and defended The Whale from some of the complaints. He requested the same considerations as everyone else once their building was completed.
Public comment closed.
Council Member Veach supported amplified music after 6:30 p.m. at a lower decibel level on Sundays through Thursdays.
Council Member Woodson supported following the code and lifting the 6:30 p.m. restriction at a lower decibel level.

Council Member Veach moved to approve the resolution with the LPA recommendations except to allow amplified music from 6:30-9:00 p.m. Sunday through Thursday at the lower decibel level; second by Council Member King.
Motion carried unanimously by roll call vote.

C. Resolution 23-72, VAR20230078- 432/434 Harbor Court

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230078 TO REDUCE REAR YARD SETBACK BY 5 FEET, FROM THE REQUIRED 20 FEET TO 15 FEET FOR THE PROPERTY LOCATED AT 432/434 HARBOR COURT; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King - telephone call with the developer; Vice Mayor Atterholt - telephone call with the developer; Council Member Woodson - conversation with the developer; Council Member Veach and Mayor Allers both had drive-bys.
Planner Propst reviewed the background of the request as stated on the blue sheet. She noted that the LPA unanimously recommended approval and she did receive one letter of objection from a property owner in the vicinity.
Planner Propst did not think that the property owner could get the density to build back a duplex on the property.
Samir Malviya from Homebound represented the applicant and Drew Whiting, Homebound architect, pointed out that they were only asking for a rear setback to maintain the streetscape. He clarified the dimensions of the proposed structure.

No public comment.
Council Member Veach felt it was somewhat of a de minimus request. Council Member Woodson felt it would be a huge improvement for the neighborhood.

Vice Mayor Atterholt moved to approve the resolution; second by Council Member Veach.
Mayor Allers discussed the results of the staff report and agreed it was a design choice and not a de minimus variance.
Motion carried 4-1 by roll call vote with Mayor Allers dissenting.

D. Resolution 23-73, VAR20230062- 405 Harbor Court

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230062 TO REDUCE THE HARBOR COURT STREET SETBACK BY 17 FEET, FOR AN 8 FOOT SETBACK WHERE 25 FEET IS REQUIRED FOR THE PROPERTY LOCATED AT 405 HARBOR COURT; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King - received an email from Mr. Crow; Vice Mayor Atterholt - received the same email; Mayor Allers received the same email and visited the site; Council Member Woodson - received the same email and spoke to the neighbors and builder and Council Member Veach - received the same email and researched LEEPA (Lee County Property Appraiser's Office).
Planner Propst reviewed the background of the request as stated on the blue sheet. She noted the LPA recommended approval with conditions on a 5-2 vote. One property owner voiced opposition.
Samir Malviya from Homebound described the property and the cul-de-sac. Homebound architect Drew Whiting clarified that the proposed setback was 11 feet and the front stair would encroach up to the 8-foot line. Mayor Allers questioned why the company had not tried to conform to the LDC and comprehensive plan's current requirements instead of requesting homes' variances. Mr. Malviya replied that this was his third variance request and 30 other homes were being built without variances. He added that these lots were irregular and it did not make sense to change their home designs for each property. He stated they wanted to offer property owners an affordable way to rebuild. Council Member Veach commented that a house could be built on the property without a variance. Mr. Whiting described the driveway placement and indicated that they agreed to leave the underside of the ground unit open to provide parking.
Planner Propst clarified that she based the resolution on the first plan, not the second. The stairs must be modified and plans resubmitted because the stairs can only encroach 5.5 feet. Mr. Whiting clarified that it was an 8-foot setback.

No public comment.
Council Member Veach stated the house should be built to fit the lot they have. He did not support the request.

Council Member Veach moved to deny the resolution; second by Mayor Allers. Motion defeated, 3-2 by roll call vote, with Council Members King and Woodson and Vice Mayor Atterholt dissenting.

Council Member Woodson moved to approve the resolution with the conditions stated; second by Vice Mayor Atterholt.

Vice Mayor Atterholt explained that the plats were bizarre and presented rebuilding challenges.

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

E. Resolution 23-76, VAR20230063-810 Third St

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR20230063 VARIANCE OF 12 FEET, 8 INCHES FROM THE REQUIRED 25 FOOT STREET SETBACK. FOR THE PROPERTY LOCATED AT 810 THIRD STREET; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King - email from Mr. Crow; Vice Mayor Atterholt - the same email and Mayor Allers - the same email.
Senior Planner Smalley reviewed the background of the request as stated on the blue sheet. He addressed two additional feet for parking. The LPA voted 5-2 to recommend approval. Senior Planner Smalley indicated that the property owner would have to request a right-of-way permit for the driveway. He added that the property owner would have to work with the adjacent lot for a shared parking plan and the town was not planning on paving the area.
Mr. Malviya stated that both property owners would cooperate to share parking. Construction should start in about 12 weeks and it took 8 to 9 months to build. Mr. Whiting commented that the driveway was already being shared; although there was no formal agreement.
No public comment.
Mayor Allers cannot support the request.

Council Member Woodson moved to approve the resolution with conditions; second by Vice Mayor Atterholt.
Motion carried 3-2 by roll call vote with Mayor Allers and Council Member Veach dissenting.

F. Resolution 23-74, VAR20230061- 800 Third Street

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230061 TO REDUCE THIRD STREET SETBACK BY 2.5 FEET, FROM THE REQUIRED 25 FEET; TO REDUCE THE SIDE SETBACK BY 2.5 FEET, FROM THE REQUIRED 7.5 FEET; AND TO REDUCE REAR WATERBODY SETBACK BY 7.5 FEET, FROM THE REQUIRED 25 FEET FOR THE PROPERTY LOCATED AT 800 THIRD STREET; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King - email from Mr. Crow; Vice Mayor Atterholt - the same email; Mayor Allers - the same email; Council Member Woodson - the same email, conversations with neighbors and spoke to the owner and builder and Council Member Veach - the same email.

Senior Planner Smalley reviewed the background of the request as stated on the blue sheet. He noted that all measurements were made to the property line, which was not necessarily parallel with the sea wall. The LPA voted 4-3 to recommend approval. He noted that the town technically owned the tip of the property, but some lots did not mirror a seawall and he thought it was a mismatch. The property owners could request that it be vacated from the town.

Mr. Malviya from Homebound explained why multiple building options were offered. He described their home designs, construction and price. Mayor Allers stated that the decks could be shortened to fit into the side setbacks. Mr. Whiting replied that the owners changed to a 6.5-foot setback on one side and 6 feet on the other. Mayor Allers described how the decks could be reduced. Mr. Whiting responded that the house would have to be shifted back.

No public comment.

Council Member Veach stated that they could build without variances. Mayor Allers could live with pushing the house closer to the property line in the back but could not support the request. Council Member Veach pointed out that staff recommendations were not mentioned, but the LPA recommendations were.

Mayor Allers moved to deny the resolution based on the LPA decision and testimony from expert witnesses; second by Council Member Veach.

Motion defeated 3-2 by roll call vote with Council Members Woodson and King and Vice Mayor Atterholt dissenting.

Vice Mayor Atterholt moved to approve the resolution based on the majority decision of the LPA; second by Council Member King.

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

G. Resolution 23-82; VAR 20230057 - 4830 Coral Rd.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR20230061, FOUR VARIANCES FROM LDC TABLE 34-3 FOR TWO LOTS, TO DECREASE REQUIRED LOT WIDTH BY 28.75 FEET FROM THE REQUIRED 75 FEET AND LOT AREA BY 2,412.5± SQUARE FEET FROM THE REQUIRED 7,500 SQUARE FEET, IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 4830 CORAL RD; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Ex parte communications: Mayor Allers - spoke to the applicant and Council Member Woodson - watched the LPA meeting. No disclosure from other members.

Planner Propst reviewed the background of the request as stated on the blue sheet. She noted the LPA voted 4-3 to approve the request with conditions. The applicant submitted an updated application to expand the variance request. The staff felt it was an appropriate request. Creating two lots would allow the property owner to construct a single-family home on a single parcel for himself and a single-family home on a single parcel for his adult children. Planner Propst stated that both proposed houses would meet all required setbacks.

Lonnie Letteri, applicant and business owner, distributed and discussed a handout. He shared the property's history and described the condition when he purchased it. He described the layout of the structure and provided pictures. He included letters of support from neighbors and separate utility bills. Page 13 showed what he wanted to do with the property and provided an aerial view. He indicated that he would eventually fill in the pool in the front yard and install a pool in the back yard. Mr. Letteri stated that he wanted to build two structures within the code.

No public comment.

Vice Mayor Atterholt thought it was an excellent proposal and had his support. Mayor Allers agreed. Council Member Veach supported the request but was concerned about splitting one lot into two non-conforming lots.

Vice Mayor Atterholt moved to approve the resolution; second by Council Member King.

Motion carried unanimously by roll call vote.

H. Resolution 23-75, VAR20220027- 4601 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20220027 TO ALLOW A SWIMMING POOL CLOSER TO THE ESTERO BOULEVARD STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING FOR THE PROPERTY LOCATED AT 4601 ESTERO BLVD; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Ex parte communications: All members received emails from Miller and Funk. Vice Mayor Atterholt disclosed additional email exchanges and a brief conversation with a person in the hall before the meeting.
Planner Propst reviewed the background of the request. The LPA unanimously recommended approval of the request and staff received letters of objection from adjacent property owners. Planner Propst indicated a pool could be installed in the back, but the applicant wanted a larger pool design.
Tony Vuksinic, applicant, stated this would be his retirement home. He referred to an overhead snapshot on packet page 515. He explained that the pool would be too close to the neighbors if the pool were in the back. He requested a hardship based on the pool size and included two pages of average-sized pools in the town. He explained why he wanted a larger pool and noted his wife would benefit medically from a jacuzzi.
Mr. Vuksinic stated the home would be rented until they moved permanently. He explained how he dealt with concerns regarding the renters and noted he had not received any complaints.

Public comment:
Greg Miller, resident, stated his opposition was not personal, but he opposed it because it did not adhere to the LDC. He read the corresponding code and listed other concerns. He did not want a micro-resort with a pool in the front yard and indicated no hardship was involved.
Public comment closed.
Council Member King was concerned that people wanted to testify via phone at the LPA meeting but were not allowed. Vice Mayor Atterholt commented that the only neighbors left strongly opposed the project and because of that, he would vote no. Council Member Woodson agreed with Vice Mayor Atterholt and felt it was more of a choice than a hardship. She could not support the request. Council Member Veach thought the pool in the front would be less intrusive to the neighbors, but he did not approve the request. Mayor Allers felt there was enough room in the back to install a larger pool than the illustration with a variance of an extra foot.

Mayor Allers moved to deny the resolution; second by Council Member Veach.
Motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

A. RFQ-23-16-TC; Legal Services Agreement

Authorize legal services agreement with Vose Law Firm - either Version 1 or Version 2

Town Attorney Vose requested a flat fee of $25,000.00 per month and explained why. She stated the position was incredibly intense and she noted that she would have to hire another attorney. She agreed not to request an increase for two years and described the difference between Version 1 and 2. Town Manager Hyatt described the differences between the former and current attorneys and felt that $25,000.00 was adequate. He expressed confidence in her abilities and supported Version 2. Town Attorney Vose agreed to provide an attorney in-house for eight hours per week but commented that it was not the most efficient way to do things. Mayor Allers supported Version 2.

Mayor Allers moved to approve RFQ-23-16-TC for Legal Services Agreement Version 2; second by Vice Mayor Atterholt.
Motion carried unanimously.

B. Floor Area Ratio Discussion

Provide input to the way Floor Area Ratio is calculated

Planner Propst reviewed the Floor Area Ratio (FAR) calculations and displayed a slide with examples of the Commercial Office Zoning District options. The following slide showed examples of the Downtown Zoning options. Discussion was held regarding amendments to the comp plan, CPDs and exceptions. Planner Propst confirmed that changing the calculation of FAR would not affect the comprehensive plan. The final slide showed CPD Examples in Pedestrian Commercial Zones. All Council members agreed with leaving the ground floor open in most places. (Council Member Veach had to leave the meeting.)

XIII. FINAL PUBLIC COMMENT

John Cameron, resident, addressed comments made by the MERTF (Marine and Environmental Resources Task Force) Chair at their June meeting regarding activities at the south end of the island. He stated his neighborhood is frustrated at the Audubon’s actions for suing the town. He noted that MERTF needed to apologize to property owners on the south end. He felt that MERTF had an agenda to stop the project that benefited the neighborhood and the environment. He noted that the south end supported all efforts of the FWC and wanted to work with them to protect the wildlife.
Ed Rood, resident, stated that he and the neighborhood were grateful to the Council for their decision. He reviewed the project's history and noted eleven residents could now use their walkover.
Terry Persaud, resident, requested to meet with the lawyers in person to discuss the agreement.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt reported that he was reorganizing staff and interviewing people. Budget reviews will be ongoing in the next couple of days. Utilities Manager Steve Matuska stated that the Lee County Board of Commissioners adopted a resolution on June 20, 2023, which included a 5-year 8% annual increase on all Lee County utility services effective July 1, 2023. Residents will be notified in this month's bill regarding their utility bill and Lee County will review the increase during the next Commissioner's meeting on August 15, 2023, at 9:30 a.m. on Main St. in Fort Myers. On September 1, 2023, the town will resume typical utility procedures and policies.

Operations & Compliance Director Frankie Kropocek reported that Bayside Park would open on September 1, 2023, for 1/3 of the original price of $1.2 million and everything was reimbursable by FEMA.

Public Works Director Jason Freeman stated the clock was in their possession and the base would have to be replaced.

Director Culture, Parks & Recreation Jeff Hauge reported that work on the Bay Oaks ball field, including labor, time and supplies were donated by Jason Clark and ICS and the field should be ready for Scotts Lawn to start in a couple of weeks. Peter Plumbing was replacing the campus water line, and Director Hauge is waiting for estimates from three pool companies. He could not provide a timeline for the completion of the pool, but the staff was looking for a pool to use for water aerobics. The softball field assessment was being conducted and ICS would level out the current softball field for future projects. Bay Oaks was in the process of being approved by the fire department and a pre-construction meeting was held with Gleason. The project was on schedule. Summer camp was a big success, and the outdoor exercise equipment would be replaced, although it would require additional funding, possibly through grants.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Vose was happy to be there. She stated there would be additional shade meetings regarding litigation. Vice Mayor Atterholt questioned whether they could create an ordinance to empower the permitting staff to approve some variances administratively. For example, if a resident wants to replace a fence precisely like it was before the hurricane, they should not have to come before the Town Council to request a variance. Council members agreed with the vice mayor.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Woodson stated that Rick Loughrey invited all community members to a press conference at his house tonight at 6:00 p.m. She agreed with Mr. Camon's comments and thought they should look at how advisory committees address the community.

Council Member King attended meetings at the fire department and library and noted neither entity raised its millage rates. He attended the Resilient Lee meeting and met with the project manager of the Matanzas Pass Bridge project.

Vice Mayor Atterholt suggested that the Town Manager invite Matt Caldwell to talk to the Town Council about the tax base.

Mayor Allers stated that Lee County would present its CDBG on August 15th, 2023 at 5:30 p.m. at Diamondhead and the town would share their plan at the same time. All appropriation requests were submitted. The lighting solution had a snag, but it was resolved. He noted he would be in Tallahassee on Thursday.

XVII. ADJOURNMENT

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

The meeting was adjourned at 3:13 p.m.

Minutes adopted as amended, August 21, 2023; Motion by Council Member Woodson and seconded by Council Member Veach. Passed 5-0.

Amy Baker, Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
Albers Daniel Lee		Town of Fort Myers Beach Council
MAILING ADDRESS		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
5485 Avenida Pescadora		☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY	COUNTY	NAME OF POLITICAL SUBDIVISION:
Fort Myers Beach	Lee	Council
DATE ON WHICH VOTE OCCURRED		MY POSITION IS:
8/7/2023		☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also MUST ABSTAIN from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Dan Allers, hereby disclose that on 8/7, 20 23:

(a) A measure came or will come before my agency which (check one or more)

X inured to my special private gain or loss;

X inured to the special gain or loss of my business associate, Tim Ryan;

___ inured to the special gain or loss of my relative, ___;

___ inured to the special gain or loss of ___, by whom I am retained; or

___ inured to the special gain or loss of ___, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Ordinance 23-09; TPI-FMB Amending the CPD. My partner Tim Ryan and I have a contract for golfcart services with Margaritaville.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

8/7/23
Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.