



Fort Myers Beach Town Council

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

Minutes

Monday, September 11, 2023

10:00 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

Not recorded.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Add Resolution 23-108 to item G. on the Consent Agenda and pull D., E., H., I. and J. for discussion.

Vice Mayor Atterholt moved to approve the amended agenda; second by Council Member Veatch.

Motion carried unanimously.

V. PUBLIC COMMENT

No public comment.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veatch recognized the crew who cleaned up after Idalia and was happy to see the construction traffic.

Council Member Woodson mentioned the Farmer's Market and welcomed all the activity. The 5k went off without a hitch and raised a lot of money for the town.

She commented on Silas Schmucker's throwing arm. She acknowledged 9/11.

Vice Mayor Atterholt noted there was a 9/11 ceremony at the Lenell Station and he described the Memorial which included a steel piece from the Twin Towers. He mentioned the Beach Talk Radio race and shared a story regarding the efforts of a Vietnam veteran to finish the race. He commented on the Faith Center services at

the Mound House by Paster Antonucci.

Council Member King commented on 9/11 and thanked everyone who participated in the drunk tank. He thanked Mayor Allers and his wife for helping to distribute supplies up north after Hurricane Idalia and he thanked the very hardworking town staff for cleaning up.

Mayor Allers thanked ICS for all their hard work removing the sludge. He thanked Rude Shrimp for organizing the dunk tank and thanked Frankie, Andy and the staff for cleaning the debris from Idalia so quickly.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

VIII. APPROVAL OF MINUTES

A. Town Council - August 21, 2023

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

Motion carried unanimously.

B. Town Council Special Meeting - August 29, 2023

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

Motion carried unanimously.

IX. CONSENT AGENDA

Council Member King moved to approve the Consent Agenda with items D., E., H., I., and J. pulled for discussion; second by Council Member Woodson.
Motion carried unanimously.

A. Resolutions 23-100 and 23-101; Extending Local State of Emergency- Hurricane Ian

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

Motion carried unanimously.

B. Resolution 23-106; Extending Declaration of State of Local Emergency- Hurricane Idalia

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE

CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

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

Motion carried unanimously.

C. Resolution 23-102; Electronic Participation at Meetings

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, MAKING FINDINGS; PROVIDING PROVISION FOR ELECTRONIC PARTICIPATION DURING CERTAIN AGENDA ITEMS FOR PARTICULAR MEETING(S) UNDER CERTAIN CONDITIONS; AND PROVIDING AN EFFECTIVE DATE.

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

Motion carried unanimously.

D. Comprehensive Emergency Management Plan

Approval of the Town's CEMP

Council Member Veach shared three ideas for improving responses to a storm. Set up a mechanism for the town to communicate with hotel owners and property managers regarding risks and options for their guests. He will work with staff to set something up. He felt they should discuss officials breaking down doors after an emergency. Town Manager Hyatt and Town Attorney Vose will work on a plan. Council Member Veach questioned what the town could do to discourage squatting and looting after a storm. Mayor Allers replied that he thought the fire department and sheriff's office were working on a plan. Vice Mayor Atterholt questioned whether residents could have returned to the island after the injured people were rescued but before the deceased were removed. Mayor Allers responded that the magnitude of the disaster prevented anyone from getting around the island and the fire chief explained that it was difficult to set a safe timeframe for people to return. He added that communication was key and the plan had to address how to identify those who were supposed to be back on the island. Town Manager Hyatt indicated that the CEMP was good to go as is and they could update it as needed.

Council Member Veach moved to approve the Town's CEMP; second by Mayor Allers.

Motion carried unanimously.

E. 2023-24 TDC Grant Agreements

Authorize the Town Manager to execute the Lee County Tourist Development Council grant documents for Fiscal Year 2024.

Council Member Veach clarified that the TDC funds requested would be used for temporary restrooms at Palm, repair beach accesses, and replace the shade structures and add temporary restrooms at Newtown Park.

Council Member Veach moved to approve the TDC grant documents; second by Council Member King.

Motion carried unanimously.

F. Edward Byrne JAG Grant

Support the distribution plan for the \$189,118 Edward Byrne Memorial Justice Assistance Grant Program Funds (JAG).

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

Motion carried unanimously.

G. Bayside Park Lighting

Reapprove the purchase of previous lights and accessory items for Bayside Park in the amount of \$117,906.39, waiving the procurement policy as these lights are manufactured by a sole-source, SESCO Lighting.

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

Motion carried unanimously.

H. Special Event: Island Hopper Singer / Songwriter Fest

Singer Songwriter Fest-Requesting to use Bayside Park for an event along with waiver of all fees.

Council Member Veach remarked that his comments addressed items H., I. and J. He noted that many events were planned to commemorate the first anniversary of Ian. He suggested that Communications Coordinator Jenny Dexter post the information on the website.

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

Motion carried unanimously.

I. Special Event: September 28th Special Ceremony

Beach Talk Radio requesting use of Bayside Park for a Special Ceremony commemorating the one-year anniversary of Hurricane Ian on September 28, 2023

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

Motion carried unanimously.

J. Special Event: Fort Myers Beach Memorial

FMB Revival would like permission to hold an extensive event from First St through Third St on Old San Carlos with vendors set up in parking lots at 401 and 420 Old San Carlos.

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

Motion carried unanimously.

X. PUBLIC HEARINGS

- A. Resolution 23-107; VAR20230088 - 125 Strandview Ave.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR20230088 VARIANCE OF 6 FEET FROM THE REQUIRED 25 FOOT STREET SETBACK AND A VARIANCE OF 7 FEET, 6 INCHES FROM THE REQUIRED 20 FOOT REAR SETBACK FOR THE PROPERTY LOCATED AT 125 STRANDVIEW AVE; AND PROVIDING FOR AN EFFECTIVE DATE

Town Clerk Baker stated that the hearing was properly advertised and swore in those providing testimony. Mayor Allers read the title of the resolution. Ex parte communications: Mayor Allers drove by and Council Member Veach spoke to residents after the storm. No disclosures from other members. Community Development Senior Planner Jason Smalley reviewed the request as stated on the blue sheet. He described the cottage code on the beach side that allowed a property owner to rebuild a house the same size as their previous house before Ian. The LPA (Local Planning Agency) recommended approval.

Brian Turnis represented the applicants. He stated the setback for the prior structure was originally 10 feet and over the years increased to 25. He explained that the property only had a front and two sides. He submitted letters of support from his neighbors. He remarked that there was an existing pool on the property they would have to work around. No public comment.

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

Motion carried unanimously by roll call vote.

XI. ADMINISTRATIVE AGENDA

No items.

XII. FINAL PUBLIC COMMENT

Cliff Gallagher, resident, commented that he was no longer allowed to park his motor home on his property without jumping through a lot of hoops, although he had been parking it there since the late 1980s. He stated he had plenty of room on his property to park it and the town had to recognize his New Jersey registration. He questioned whether the town was still planning to apply for a grant for workforce housing. He did not support the idea.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hyatt recognized the town staff for their hard work at Bayside Park. The Times Square clock will be installed on September 14, 2023, but it will be covered until the 28th. The large ballfield will be worked on in a few days and he will present information about some changes. Vice Mayor Atterholt confirmed that Town Manager Hyatt invited the Lee County Appraiser to the 9:00 a.m.

meeting on September 25, 2023, regarding trim notices. Consensus was reached to proceed out of order so residents could ask questions directly.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Vose stated that the Community Foundation requested the rectangular logo in addition to the round logo for their flag.

Council Member Veach moved to approve the use of the Town of Fort Myers Beach logo license with the Fort Myers Beach Community Foundation; second by Vice Mayor Atterholt.

Motion carried unanimously.

Town Attorney Vose will review the RV ordinance in response to Mr. Gallagher's complaint.

A. Issuance of Dune Walkover permit for 8150/8170 Estero

Town Attorney Vose questioned whether it was appropriate to discuss the case since both of the property owners' attorneys were not present. However, she did not see a legal problem with the issuance of a permit. She noted that an indemnification agreement would not be considered a settlement because the litigation was brought by the Audubon Society. She indicated that the judge in the case had not issued a rule to show cause yet. Council Member Veach felt that it was important that all the attorneys weigh in before they move forward with any action.

Council Member King moved to issue the permit; second by Council Member Woodson.

Mayor Allers preferred to add the issue to the September 25, 2023 agenda. Motion denied; 3-2 with Mayor Allers, Vice Mayor Atterholt and Council Member Veach dissenting.

Mayor Allers moved to add this as an item to the September 25, 2023 agenda; second by Council Member Veach.

Motion carried 4-1 with Council Member King dissenting.

B. Ordinance Discussion - Owner Builder Permits

Item is for discussion only

Town Attorney Vose discussed owner/builder permits and trusts. The only type of trust that qualified for owner/builder permits was a revocable living trust. She added that this particular trust was the only one allowed to have a homestead tax exemption because it was the alter ego of one person or a married couple. Vice Mayor Atterholt supported having the language put forth in an ordinance. Town Attorney Vose commented that the ordinance would not help those who had other types of trusts. Consensus was reached to add the language to an ordinance.

C. Discussion regarding potential settlement of Persaud Code Enforcement matters

Attorney Sarah Spector represented Persaud Properties. She noted Mr. Persaud agreed to remain in compliance for one year and at the end of the year, he would put 50% of the liens into escrow and it would be returned after one year if Mr. Persaud remained compliant with the agreement. Mr.

Persaud withdrew all litigation but there were three pending rehearing's with the Special Magistrate. Attorney Spector commented that Mr. Persaud was in compliance with everything. Mr. Persaud will remove the chairs and the tree stump.

Town Attorney Vose stated that the total lien figure was \$2,675,225.00. She will meet with Attorney Spector to discuss details. Council Member Woodson questioned the status of the liens on Mr. Persaud's other properties. Town Attorney Vose replied that those properties were still subject to foreclosure.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King questioned why the view corridor situation was not on the agenda. Senior Planner Smalley commented that the staff needed more direction. He will check with Planners Green and Propst regarding potential language.

Finance Director Joe Onzick described what to expect during the budget hearings at 5:01 p.m. Vice Mayor Atterholt suggested inviting meteorologist Matt Devitt to the September 28, 2023 meeting to discuss Hurricane Ian.

Council Member Woodson questioned the status of the pool at Bay Oaks. Culture, Parks & Rec Director Jeff Hauge reported that he was still receiving quotes to repair the pool. He has not located any pool on the island that could temporarily host classes.

Council Member Veach discussed mixed-use templates to streamline permitting and suggested they invite the gentleman from the University of Florida to the September 25, 2023 meeting. Mayor Allers felt they should have more discussions with the county. Vice Mayor Atterholt suggested that the topic be added to an M&P. Council Member Veach did not want to kick the can down the road. Consensus was reached to add the discussion to an M&P on October 5, 2023, if the gentleman was available.

Mayor Allers attended the VOCC meeting and nothing will change but they were willing to work with the town in the future. Discussion was held between Council Member Veach and Mayor Allers regarding the action plan and the LMI grant.

Town Attorney Vose will bring back a proposed development agreement with deviations.

XVI. ADJOURNMENT

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

The meeting was adjourned at 12:52 p.m.

Minutes adopted, September 25, 2023; Motion by Council Member Veach and seconded by Council Member King. Passed 5-0.



Amy Baker, Town Clerk