Fort Myers Beach Town Council

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

Minutes **Monday, August 21, 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

Move B. from the Administrative Agenda to after the second presentation and pull H. out of the Consent Agenda for discussion.
Council Member King moved to approve the amended agenda; second by Council Member Woodson.
Motion carried unanimously.

V. PROCLAMATIONS

A. <u>Florida Festivals and Events Association</u>

Recognition of the Florida Festivals and Events Association's support to Fort Myers Beach after Hurricane Ian

Mayor Allers read the proclamation into the record and will present the proclamation to the Florida Festivals and Event Association at their annual event on Wednesday.

VI. PUBLIC COMMENT

Linda Miller, Farmer's Market, thanked the town for preparing Times Square for the Farmer's Market on September 1 from 9:00 a.m. - 1:00 p.m. She added that she had two more applications for Moss Marina and Santini's Plaza.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach thanked Flood Plain Coordinator Kristin Schumacher who spent hours helping the Loughery's find a solution to their issue. He thanked Sue and Michelle for picking up trash on the beach.

Vice Mayor Atterholt noted that Monica Schmucker was running for the Lee County School Board. He described her background, education and experience. He listed her accomplishments and wished her well.

Council Member King thanked everyone who was involved with the Loughery's situation. He thanked the community for helping Joe Salvagio.

Mayor Allers felt that Monica would be a great asset to the board. He thanked everyone who came to Joe's rescue and noted that this was a true example of who they were as a community. He thanked the Loughery's for getting the recognition and getting people to help. He encouraged people who were struggling to ask for help.

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No reports.

IX. PRESENTATION

A. How Communities Succeed & Fail

Professor Mike Collins, Florida Gulf Coast University

Professor Collins stated that he has a lot of experience with communities and utilized PowerPoint to share his background. He managed hotels and resorts all over the country. He displayed slides of hotels and golf courses he managed and described the history of The Resort at Glade Springs in West Virginia. He reviewed the improvements made to the resort to draw tourists in. Slides included: Three Distinct Hotel Business Functions, The All-Square Operating Philosophy, High-Risk Investment, How Hotels Make Money, Room Revenue Drives Profit, Performance By Month (2010-2019 average), Room Rate Drives Profit, Upper-Upscale & Luxury Hotels, Demand Drivers & Demand Absorbers, Fort Myers Beach Resort Development, Market Recovery History (2000-2019) and Hotel Taxes in San Fransisco. His message was that tourism could subsidize communities. He offered his services for free and provided his contact information.

B. Coastal Engineering Consultants - Beach Renourishment Project

Estero Island Shoreline Protection Project Update (aka Beach Renourishment Project) by Michael T. Poff, P.E. - Coastal Engineering Consultants, Inc.

Mr. Poff provided an update with a PowerPoint presentation. Slides included: Outline, Recovery Plan Summary, FEMA Category B Emergency Berm (Central-South), Photos of the Berm, FEMA Category G (North), North Beach Segment, FDEP Hurricane Recovery Plan, Public Beach Accesses, Beach Access #20 Preliminary Plans, Additional Berm Segments, Scour Fills, Estero Island Beach Nourishment Project, North-Central Segment, Central Segment, South Segment, Construction Easements, Cross Sections of Options 1, 2 and 3, Option 1, Option 2, Option 3, What to Expect, Post-Construction Requirements and Website.

X. APPROVAL OF MINUTES

A. Town Council August 7, 2023

Amendments: Under Local Achievements and Recognitions regarding the Loughery situation, Council Member Veach indicated that the town could have given a variance for an accessory structure between the house and the street. Council Member Veach made the motion and Council Member King seconded the motion to accept Planner Propst and Senior Planner Smalley as experts in A. under Public Hearings.

Council Member Woodson moved to approve the amended minutes; second by Council Member Veach.
Motion carried unanimously.

B. Management & Planning Session August 10, 2023

Council Member Woodson moved to approve the minutes; second by Council Member Veach.
Motion carried unanimously.

XI. CONSENT AGENDA

Vice Mayor Atterholt moved to approve the Consent Agenda apart from Item H.; second by Council Member Woodson.
Motion carried unanimously.

A. Bay Oaks Little League Field Grand Re-Opening

Town of Fort Myers Beach / Bay Oaks Recreational Campus would like to hold a Little League Ballfield Grand Re-Opening Celebration on August 28, 2023 from 4 pm to 6:30 pm. Set up time will begin at 2 pm. This is a one-time event. Event holder is requesting the use of Town property for music, food, restroom trailer, 20'-30' tent and a generator. Dependent on receiving approval from LCSO and the Fire Department.
Vice Mayor Atterholt moved to approve; second by Council Member Woodson.
Motion carried unanimously.

B. Special Event; Charity 5K Race at Diamondhead.

Requesting approval of charity 5K race
Vice Mayor Atterholt moved to approve; second by Council Member Woodson.
Motion carried unanimously.

C. Resolutions 23-88, 23-89 and 23-90

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.

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

D. Bayside Park Electric Repairs

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN AUGUST 16, 2023 REGARDING THE WAIVING OF THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND APPROVAL OF THE PROPOSALS RECEIVED FOR ELECTRIC AND SITE WORK FOR BAYSIDE PARK IN THE AMOUNTS NOT TO EXCEED $83,400 AND $60,000; AND PROVIDING FOR AN EFFECTIVE DATE.

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

E. Resolution 23-96; Estero Island Shore Protection Project

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AUTHORIZING TOWN STAFF TO SUBMIT A FUNDING REQUEST TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE ESTERO ISLAND SHORE PROTECTION PROJECT; AND AUTHORIZING LOCAL MATCHING FUNDS FOR FUNDING RECEIVED FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND PROVIDING FOR AN EFFECTIVE DATE

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

F. Resolution 23-92; ITB-23-08-CD, Change Order #2

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING CHANGE ORDER #2 TO CONTRACT ITB-23-08-CD BETWEEN THE TOWN AND GRUBBS EMERGENCY SERVICES FOR INCREASING CONTRACT TIME 109 DAYS AND INCREASING CONTRACT PRICE $169,813.

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

G. Resolution 23-94; RFQ-21-09-EN, STA #2

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A CHANGE TO SUPPLEMENTAL TASK ORDER #2 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS FOR INCREASING THE AGREEMENT LEGNTH TO 161 DAYS AND

REALLOCATING $25,690 FROM TASK 3 FOR BERM PLANTING SERVICES TO TASK 2 FOR CONSTRUCTION PHASE SERVICES AND ADDING AN ADDITIONAL $20,000 TO TASK 2 FOR CONSTRUCTION PHASE SERVICES.

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

H. Resolution 23-97: Health Insurance for Elected Officials

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, MAKING FINDINGS; ALLOWING ELECTED OFFICIALS TO PARTICIPATE IN THE FORT MYERS BEACH HEALTH INSURANCE PROGRAM FOR TOWN EMPLOYEES; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Vose read a state statute providing health insurance for public officers and employees. She was unsure why previous legal opinions indicated the town needed a charter amendment to offer health insurance to council members. Human Resources Manager Talissa Oliveira reviewed a handout she distributed at the last meeting regarding the change and cost of health insurance for council members. She referred to Alternative 1 for monthly premiums and read the price in each column and the cost to the town. The new plan would take effect on October 1, 2023.

Vice Mayor Atterholt moved to approve the resolution; second by Council Member King.
Motion carried 4-1, with Council Member Veach dissenting.

I. Resolution 23-98; Transition Health Insurance from Benecon to FMIT

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING ADOPTING THE NEW HEALTH INSURANCE PLAN WITH FMIT AND PROVIDING HEALTH INSURANCE TO THE ELECTED OFFICIALS.

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

XII. PUBLIC HEARINGS

A. Resolution 23-86, VAR20230070, 434 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230070 TO DECREASE THE FRONT (WEST) SETBACK BY 9 FEET AND DECREASE THE REAR (SOUTH) SETBACK BY 5.5 FEET, TO SWITCH THE SIDE AND REAR SETBACKS AND TO ALLOW FOR THE ENCROACHMENT OF MECHANICAL EQUIPMENT 1.5 FEET INTO THE SIDE (NORTH) SETBACK, FOR THE PROPERTY AT 434 ESTERO BLVD; PROVIDING

FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Baker swore in those providing testimony. Town Attorney Vose explained quasi-judicial proceedings. Community Development Planner Jason Green described his experience.

Council Member Veach moved to accept Jason Green as an expert witness; second by Mayor Allers.

Motion carried unanimously.

Mayor Allers read the title of the resolution. Ex parte communications: Mayor Allers drove by the property. No disclosures from other members.

Planner Green reviewed the background of the request as stated on the green sheet. He noted that staff recommended denial because it was a two-story design.

Richard Durling of Marvin Homes represented the owner, Sarah Tarble. He noted this house was one of 12 cottage home lots in the neighborhood. He stated that the request was the minimum required and was in roughly the same footprint. Mr. Durling indicated they wanted to see the neighborhood stay with the 12 lots rather than have a developer build a condominium. He described the possibility of a small enclosure on the ground level that would meet the building code requirements. The footprint was about 676 square feet and the house was approximately 1,500 square feet on two floors.

No public comment.

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

Council Member Veach noted that they had a 676 sq. ft. house and they should rebuild using the same square footage. Mayor Allers questioned whether Vice Mayor Atterholt would amend his motion to include any enclosed space through the breakaway wall required under the code for storage of bikes, not necessarily in the garage, but a smaller area just for bikes. Vice Mayor Atterholt thought they hoped to leave the area free for debris, storm, and view corridor purposes. Planner Green added that there had to be sufficient room to park the vehicles. Mayor Allers brought up allowing space for a potential future elevator shaft. Council Member Woodson suggested allowing 100 square feet for storage.

Vice Mayor Atterholt moved to approve the resolution with conditions as recommended and the first floor shall not be enclosed except for up to 100 square feet; second by Council Member Woodson.

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

B. Resolution 23-87, SEZ20230126, 163 Old San Carlos

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20230126 TO TEMPORARILY ALLOW OUTDOOR CONSUMPTION ON PREMISES WITH A RETAIL USE AND CONDITIONS FOR THE PROPERTY

LOCATED AT 163 OLD SAN CARLOS BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: Mayor Allers - emails and drove by the property; Council Member Woodson - knew the property, had prior conversations and watched the LPA meeting. No disclosures from other members.

Planner Green reviewed the request as stated on the green sheet. He noted that the LPA recommended approval with conditions.

Applicant Suzanne Bahan was close to opening her bar before Hurricane Ian destroyed it. She requested that her COP license for 185 Old San Carlos be temporarily transferred to an outdoor venue at 163 Old San Carlos. She had insurance on her property at 163 but not 185. Since she has no income, she cannot apply for loans. She described the site plan on page 255, which included a shipping container, a seating area, tables & chairs, an area for a band and retail racks. Porta-potties will be on the site. Planner Green noted that the shipping container would have to be movable, but Ms. Bahan commented that Planner Propst said it had to be strapped down. Planner Green will double-check the requirements. Ms. Bahan noted that she paid a $3,800 fee for the special exception but could not use it because of the hurricane. She requested that the amendment fee be waived.

(Vice Mayor Atterholt left the meeting.)

No public comment.

Council Member Veach moved to approve the special exception to temporarily move the COP with the conditions and waive the application fee; second by Council Member Woodson.

Motion carried unanimously with Vice Mayor Atterholt excused.

XIII. ADMINISTRATIVE AGENDA

A. <u>Times Square Clock Preparations</u>

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, WAIVING THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND APPROVAL OF PROPOSALS RECEIVED FOR ELECTRIC AND SITE WORK FOR TIMES SQUARE IN AMOUNTS NOT TO EXCEED $__________& $___________; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Operations Compliance Director Frankie Kropocek stated that since no one knew the electrical layout under the pavers, it was decided that a ground-penetrating radar would be safer. The proposal was put together by the general contractor who was also doing work at Bayside Park. He stated that the installation cost would be approximately $96,000.00 and the electrical cost would be $55,000.00. The value of the clock was approximately $40,000.00, which was donated.

Council Member Veach mentioned that it gave him pause to spend $150,000.00 to install the clock. Director Kropocek stated that this would lay out the groundwork for everything they needed to do in Times Square. He

indicated that there were avenues the town could pursue for reimbursement. He added that the total expense may be lower. Mayor Allers moved to approve the resolution to not exceed $151,000.00 for the electrical work on the site at Times Square; second by Council Member King.
Motion carried unanimously with Vice Mayor Atterholt excused.

B. Sand Placement Onto The Beach.

Authorize Town Staff to maximize sand placement onto the beach, 1) constructing the full design beach (OPTION #1) along shoreline lengths with adequate property owner participation, 2) constructing the full design beach seaward of the ECL (OPTION #2) on shoreline lengths with isolated non-participating properties, and 3) constructing the beach at ECL elevation grade seaward (OPTION #3) on shoreline lengths dominated by non-participating properties.

Council Member Woodson questioned whether one more attempt would be made to contact property owners who have not signed the easement. Environmental Project Manager Chustz replied that certified letters went out last month but some property owners were out of the country. He noted that they would make every effort to contact people.

Vice Mayor Atterholt moved to authorize; second by Council Member King.
Motion carried unanimously.

C. Annual Communication Plan

Discuss draft communication plan and provide edits

Public Information Officer Jenny Dexter noted that her draft plan was in the packet. She utilized PowerPoint for her presentation and the slides included: DRAFT Communications Plan Input, Goals, Objectives, Media Policy, Facebook Lives or Videos, Improvements to Emergency Communications and Budget.

D. 2024 Legislative Priorities

Discussion of the 2024 Legislative Priorities

Town Manager Hyatt indicated the list needed to be formalized by the September meeting so he could send it to Tallahassee. Director Kropocek stated that their infrastructure needs were documented with FEMA and he hoped that the state would match FEMA funds, which would get the town closer to its end goal. His list consisted of the top five priority items and he remarked that their canal issues really needed to be addressed. Council Member Veach brought up building a resilient hub in Town Hall or Bay Oaks. Director Kropocek responded that it was incorporated into their plan for moving forward. Mayor Allers suggested that more emphasis be placed on item 5.

XIV. FINAL PUBLIC COMMENT

Terry Persaud, business owner, read provisions in a settlement agreement drafted by the previous attorney in June of 2023. He indicated that he responded to the agreement and only received a partial response. He stated that neither he nor his attorney voided or refused the settlement. He handed Town Attorney Vose a copy of a settlement offer.

XV. TOWN MANAGER'S ITEMS

Town Manager Hyatt stated that another species of palm tree has replaced the coconut palms in Bayside Park and the turf should be installed next week. Culture, Parks and Recreation Director Jeff Hauge stated the Little League field was being worked on and ICS Materials donated their time and staff. The turf should be installed on Wednesday and the fencing should be done within the week. The grand reopening of the ballpark was Monday, August 28, 2023, from 4:00-6:30 p.m. The light poles have been removed and two companies are in the running for stadium lights. The Bay Oaks project was approved, but the switchgear had issues and Director Hauge was working with companies for a solution. Generators would be hooked up if needed to get the project started. The pool was being worked on, but it would be a slow process. The pool was structurally fine but may need to be resurfaced. Director Hauge explained how the Little League field was mitigated.

Director Kropocek reported that the CAD design was finished two weeks ago for the Town Hall trailers. The trailers will be on the old ball field at Bay Oaks and are expected to be onsite on October 1, 2023. He stated they were on time and on target. The new trailers were less expensive than continuing to rent trailers from the state.

Town Manager Hyatt indicated that the Trust for Public Land representatives had not found anyone willing to sell their property. He stated that he and Director Kropocek identified town locations needing debris removal or demolition. Letters will be sent to ask property owners to contact staff for information on how to remove debris.

Director Kropocek noted that the parking system was evaluated and often did not work efficiently. The system was supposed to give a 10-minute warning that the meter was expiring. Many people did not refresh their phones, notice the warning or follow instructions. The town will put up educational posters if needed. He stated that if a ticketed person who did not see the warning called the town in a condensed period, the staff could void the citation. He noted that training for the public and staff was currently taking place. Council Member Veach brought up a parking voucher program for people utilizing restaurants or shopping. Mayor Allers questioned how the town came up with the administrative fees tacked onto citations. Town Manager Hyatt replied that it was on the fee schedule, which would be presented at the September meeting. He discussed current technology businesses used to offer discounts for future parking.

XVI. TOWN ATTORNEY'S ITEMS

Town Attorney Vose requested a shade session at 9:00 a.m. on September 11, 2023, regarding the James J. Jamison case. The regular Town Council meeting will start at 10:00 a.m. She asked for a volunteer in the Fort Myers Beach vs. Key Estero Shops case. A representative was needed to attend a court-ordered ZOOM Mediation at 2:00 p.m. on Tuesday, September 12, 2023. Mayor Allers volunteered.

Mayor Allers questioned where the town was at regarding Terry Persaud. Town Attorney Vose stated that Mr. Persaud's attorney informed her that the federal court case was dismissed and there was no existing lawsuit. The matter will be added to the September 11, 2023 agenda.

XVII. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Veach noted that the town used to offer amber lights to the community at cost. Mayor Allers said that storage was an issue. He stated that the Town Attorney told him that workforce housing, where priority was given to those with jobs on the beach, was not allowed under the Fair Housing Act. He questioned whether the council was interested in pursuing affordable family housing. He said he would bring it up at the housing branch meeting tomorrow if the council agreed. Mayor Allers commented that he would like to see details but did not want to be excluded from the conversation either. Mayor Allers supported an affordable project and Council Member King supported the idea but wanted to see details. Mayor Allers received support to add the item to an M&P regarding inviting someone with experience to address affordable housing.

Council Member Woodson requested an update concerning the land swap with the fire department. Town Manager Hyatt replied that he was waiting for the appraisal. Mayor Allers stated that both properties were almost the same size, close in value and details were being worked out.

Council Member King commented that the Estero Island Beach Club was confused regarding the definition of a view corridor. He suggested that staff provide clarification and questioned whether it was the ground to the sky or something different. Council Member Woodson felt it could be an open parking area or on the side from the ground to the sky. Mayor Allers agreed it could be both. Planner Green revealed that it would be up to the council to interpret the definition, but the Club was not ready to build due to the number of issues that had to be resolved. He agreed that the council should discuss the interpretation.

Planner Green will bring something back at the next meeting. Council Member King thanked Professor Collins for his presentation, but he did not present what the two of them discussed in March.

Mayor Allers stated that the deadline to apply for membership on advisory committees was September 8, 2023. Dish Network representatives will be in town for an operation appreciation day tentatively scheduled for October 28, 2023. Details will follow.

XVIII. ADJOURNMENT

Council Member King moved to adjourn the meeting; second by Mayor Allers. Motion carried unanimously with Vice Mayor Atterholt excused.

The meeting was adjourned at 2:10 p.m.

Minutes adopted, September 11, 2023; Motion by Council Member King and seconded by Council Member Veach. Passed 5-0.

Amy Baker, Town Clerk