Fort Myers Beach Town Council

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

Minutes	**Monday, December 18, 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
Remove item A. and pull item B. for discussion. Add approval of fireworks to the Town Manager's Items.
Council Member King moved to approve the final agenda as amended; seconded by Council Member Woodson.
The motion carried unanimously.

V. PUBLIC COMMENT
Dale and Jay Bonnema, resident, described the noise from the Rude Shrimp Co. disrupting his property. He stated that bars were not allowed in commercial marine zones and asked for help stopping the loud music. Mayor Allers suggested that they meet with the town manager.
Becky Weber, resident, commented that the storm drains were not working and Curlew St. had two feet of water over the weekend. She requested a timeline for when every street drain would be fixed.
A resident on Curlew St. requested a list of when the drains will be fixed on the side streets. He stated that they were selling their property because they were tired that nothing was being done for the health, safety and maintenance of the town.

Linda Miller from the Farmer's Market thanked the council and members of the staff for doing a great job.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach recognized the chili cook-off and appreciated the mayor's dance.

Council Member Woodson thanked the town for cleaning up Times Square.

Vice Mayor Atterholt commended the staff for cleaning up on Sunday morning and was thankful for the direction that leadership was heading. He recognized the town manager and town staff.

Council Member King thanked all the staff and the town manager for working hard on Sunday.

Mayor Allers recognized the Bay Oaks staff for the sleepover at the Mound House. He congratulated Scott Allen and Kevin Clark for coming in first place at the chili cook-off.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

A. Audit Committee - Chair Jeff Taylor

Chair Taylor reported that the Audit Committee met last week for the first time. He introduced himself and shared his background. He described the duties of the Audit Committee and listed the members. He noted that the Audit Committee voted to approve the audit, authorize the town manager to execute an engagement letter with Mauldin & Jenkins and recommended that the town implement a record storage system to protect against the destruction of paper records in the event of a disaster. They also recommended that the town start an ERP (Enterprise Resource Planning) software selection process. He described a typical ERP system. He stated that the committee had not discussed anything to do with looking forward financially yet, but he was confident that the finance department had a plan.

VIII. APPROVAL OF MINUTES

A. Town Council - December 4, 2023

Council Member King moved to approve the minutes; seconded by Mayor Allers.

The motion carried unanimously.

B. Management & Planning Session - December 7, 2023

Council Member King moved to approve the minutes; seconded by Mayor Allers.

The motion carried unanimously.

IX. CONSENT AGENDA

A. Resolution 23-184; Town Council Policies and Procedures

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.

Removed to correct pagination issues.

B. Moss Marina Farmer's Market

Motion to amend the Moss Marina Farmer's Market special event permit to add a vendor that would allow tasting and selling alcohol from a rum distillery.

Council Member Veach questioned whether adding alcohol at that location would be tolerable to the neighborhood. Linda Miller stated that the market at Moss Marina was very quiet and explained that the Wicked Dolphin wanted to offer rum samples to help sell their liquor. Town Attorney Vose stated that the Wicked Dolphin complied with the state law and would have to comply with the town's special event permit requirement. Ms. Miller noted that Moss Marina also had the proper liquor licenses from the state.

Council Member Veach was concerned about expanding operations at Moss Marina in light of the complaints from the neighborhood.

Council Member Woodson moved to approve the special event permit; seconded by Council Member King.

The motion carried 4-1, with Council Member Veach dissenting.

X. PUBLIC HEARINGS

A. Ordinance 23-18 Post Disaster Buildback Amendment

Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Community Development Planner Sarah Propst reviewed the background of the issue as stated on the blue sheet. She reviewed the changes made as suggested at the first reading. Council Member Veach requested clarification regarding parking underneath a unit and taking the space above to use as habitable space.

Planner Propst noted that the intent was to allow a small amount of additional square footage without increasing density. She added that the structure would be substantially the same size.

Council Member Veach brought up small hotels and the impact of additional density. Planner Propst replied that the language would not add enough square footage to make that much difference. Council Member Veach was concerned that it could be a little open-ended as to what people could do. He was hesitant to support it without knowing what the impact would be.

Planner Propst commented that FAR (Floor Area Ratio), the height and setbacks would still have to be met.

Public comment:

Larry Smith, resident, described building back his 1937 house with more bedrooms and baths so he could rent out the second unit. He stated that his lot was unusual and that over 10' x 60' of land on his property was unowned. He explained how it was created and noted that he would apply for a variance to build 25 feet from the seawall instead of from the back of his property line. He distributed information regarding his property.

Christopher Mosteiro, resident, supported the policy because it would allow him to rebuild his home. He thanked the town staff for their hard work. He requested that the number of bedrooms and bathrooms not be limited based on square footage.

John McClain, resident, commented that the LPA (Local Planning Agency) suggested allowing homeowners to build the number of bedrooms and bathrooms they chose within the existing footprint. He described how he hoped to rebuild his house in a monthly rental zone and asked that they remove the restrictions on additional bedrooms and bathrooms for residential property. Planner Propst stated that the ordinance would not apply to his situation.

Town Attorney Vose described the new business impact estimate requirement and noted it had to be posted in the advertisement. Public comment closed.

Mayor Allers did not support adding more bedrooms because property owners could request a special exception with public input from their neighbors. Planner Propst explained that the uses for single-family homes, duplexes and triplexes were different from hotel/motel uses and the density allowances were different. Mayor Allers was concerned about the financial aspects and cost of rebuilding. He felt that they should allow it for the individual owners and the hotels, or they should not allow it for either.

Planner Propst indicated they could change it to allow hotels to request more rooms through a special exception process like residential owners.

Vice Mayor Atterholt moved to approve that hotels may request an increase in the number of bedrooms and bathrooms through the special exception process and to approve the ordinance with the discussed change to section 2. e. 3.; seconded by Council Member King. The motion carried unanimously.

B. Resolution 23-185; VAR20230142 - 923 Third Street

APPROVE/ APPROVE WITH CONDITIONS/ DENY A VARIANCE FROM LDC SECTION 34-638 TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS FOR THE FRONT SETBACK IN THE RC ZONING DISTRICT FOR PROPERTY LOCATED AT 923 THIRD STREET; TO ALLOW 100-FEET OF ADDITIONAL BUILDING COVERAGE OVER THE MAXIMUM ALLOWED.

Town Clerk Baker stated that all notices were properly advertised and swore in those providing testimony. Mayor Allers read the title of the resolution. Ex parte communications: Council Member Woodson knows the property, and Council Member Veach checked out the property on LEEPA (Lee County Property Appraiser) and heard the applicant's public comments. No disclosures from other members. The applicant received a copy of the agenda and materials.

Community Development Senior Planner Jason Smalley reviewed the request for two variances as stated on the blue sheet. He indicated that he did not hear opposition from the neighbors.

Chris Mosteiro stated that his house flooded 11 times during the first year he owned it and explained his design to elevate it.

No public comment.

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

The motion carried unanimously.

XI. ADMINISTRATIVE AGENDA

A. Resolution 23-189; Mooring System Replacement Construction Management Services

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #21 OF CONTRACT RFQ-20-06-AD BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR MOORING SYSTEM REPLACEMENT CONSTRUCTION MANAGEMENT SERVICES IN TOWN OF FORT MYERS BEACH CANALS FOR A COST NOT TO EXCEED $14,168.00, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Environmental Projects Manager Chadd Chustz reviewed the reasons for the supplemental task agreement. He stated the Mooring Field was operational with 13 balls.

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

The motion carried unanimously.

B. Resolution 23-185; Temporary Dinghy Dock

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING THE TOWN TO PROCURE TWO FLOATING DOCKS FROM SNOOK BIGHT MARINA IN AN AMOUNT NOT TO EXCEED $2,000, AUTHORIZING THE TOWN MANAGER TO PROCURE COASTAL ENGINEERING CONSULTANT, INC. SERVICES AND ADDITIONAL MATERIALS TO INSTALL THE FLOATING DOCKS TO TEMPORARILY SERVICE THE MOORING FIELD IN AN AMOUNT NOT TO EXCEED $4,000, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Projects Manager Chustz thanked the Snook Bight Marina manager for offering their docks to the town at a reduced rate.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member Veach.

The motion carried unanimously.

C. FY2022 Audit Report

Accept FY2022 Audit Report prepared by Mauldin & Jenkins

Finance Director Joe Onzick reported that there were no findings and the audit opinion was clean. Findings from previous audits have been cleared up and he praised the work of the staff and what was accomplished over the year.

Council Member Veach moved to accept the report; seconded by Council Member Woodson.
The motion carried unanimously.

D. Authorize Engagement Letters with Mauldin & Jenkins to Provide Auditor Services for Fiscal Year 2023

Authorize the Town Manager to execute the Engagement Letters with Mauldin & Jenkins to provide independent external auditor services for Fiscal Year 2023

Director Onzick noted the Audit Committee recommended the approval of engagement letters with Mauldin & Jenkins.

Council Member King moved to authorize; seconded by Council Member Veach.
The motion carried unanimously.

E. Rename Bayside Park

Adopt new name for Bayside Park that was chosen by public survey and includes a reference to the veterans memorial that is planned at the Park.

Town Manager Hyatt stated that a survey was created and 390 respondents chose their favorite name from four options. The top choices in order of preference were Bayside Veterans Park, Bayside Veterans Memorial Park, Veterans Memorial at Bayside Park and Veterans Memorial Bayside Park. All council members agreed with the public and chose Bayside Veterans Park. Town Manager Hyatt will draft a resolution to formalize the name at the next meeting.

XII. FINAL PUBLIC COMMENT

Eddie Rood, resident, discussed meetings and conversations with the FWC (Fish & Wildlife Conservation). One issue on the south end was the large field of sand spurs and he suggested that the FWC be allowed to spray herbicides. Australian Pines were sprouting up and down the beach and although the FWC was authorized to control the pines within the critical wildlife area (CWA), they had no jurisdiction outside the CWA.

The FWC asked that the council allow Projects Manager Chustz to work with them to remove the pines outside the CWA. He stated that the FWC will meet with property owners in January to describe how the CWA worked.
Mr. Rood described conversations with the FWC regarding personalizing the CWA by adopting an additional name for the designated area. He proposed that the council put out a survey with the choice of Dan Hughes CWA or the Daniel L. Hughes CWA. Mayor Allers suggested that Mr. Rood meet with the town staff and questioned whether MERTF should be involved. Mr. Rood stated that he was on MERTF's agenda for the last meeting, but the committee voted to remove him from the agenda.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hyatt reported that the staff cleaned up from the weather yesterday and continued today. The street signs project on Estero continues and will move to the side streets soon. The streetlight cycle at Crescent St. will be adjusted to help move traffic. FP&L (Florida Power & Light) will install 17 solar lights on Old San Carlos next week. He noted a solar light had been installed in the parking lot behind the Surf Shop and three would be added to Bayside Park. Director Culture, Parks & Recreation Jeff Hauge stated that FDOT (Florida Department of Transportation) needed the town council to officially approve the fireworks and the bridge closure before issuing the permit. Numerous anonymous donors contributed over $55,000.00 to the fireworks, which will be one of the best shows in Florida. The fireworks will be set off from a barge approximately 1,000 feet off of the pier.

Mayor Allers moved to approve the closure of the bridge and fireworks on December 31, 2023/January 1, 2024; second by Council Member Veach.
The motion carried unanimously.

Town Manager Hyatt congratulated Jason Freeman for completing his Master of Public Administration.
Operations and Compliance Director Frankie Kropocek reported that the town was waiting for the SRF's (State Revolving Fund) final notification before they could start working on the side streets. He noted that all the low-lying streets would be completed first and Tetra Tech would be in charge of the operation. He hoped to start in mid-January and noted the list of high-priority streets would be uploaded to the town's website.
Director Kropocek stated the trailers should be on the property by the end of the week and would be put together within five to seven days.

XIV. TOWN ATTORNEY'S ITEMS

A. <u>Persuad Properties FL Investments, LLC</u>

Town Attorney Vose reviewed the proposed settlement agreement and noted it was a compromise. The settlement amount was $250,000.00, with a $500,000.00 good faith payment to be deposited into a trust account with Roetzel & Andress. After notification that the funds were received, the town manager would direct inspection of the properties to ensure compliance. If compliance was maintained, the funds would be released. If a violation was suspected, the code enforcement officer would issue a courtesy notice to correct the violation and the escrow agent would be notified. If the violation was not addressed, it would go before the Special Magistrate. The bond would be at risk and released to the town if the Special Magistrate determined a violation existed. Director Kropocek stated that the parking lot on Estero and the two properties next to the Junkanoo were in full compliance. Vice Mayor Atterholt questioned whether the tree stump next to his parking lot on his property would be removed. Director Kropocek was sure they could reach an agreement.

Terry Persaud stated that he needed a DEP (Department of Environmental Protection) permit to remove the stump, which would take six months.

Attorney Sarah Spector from Roetzel & Andress clarified that the agreement did not cover the Junkanoo property, just the two houses next to it. Council Member Veach questioned why the compliance did not match the description of what was being waived for fines and liens. Attorney Spector replied that the properties next to the Junkanoo were under contract, and they hoped to get the liens removed so Mr. Persaud could sell the properties. Council Member Veach suggested that a clause be added that if Mr. Persaud sold the properties within a year, the money would be returned to him. Town Attorney Vose did not oppose adding the clause.

Attorney Spector reviewed the history of noncompliance with the parking lot and noted the parking lot was now being used for public parking and was in compliance. Vice Mayor Atterholt questioned whether a timeline to remove the stump could be added to the agreement. Council Member Woodson suggested adding that the DEP permit had to be applied for within 30 days and the stump be removed within 30 days of receiving the permit. Mr. Persaud requested 60 days for application and 30 days after receiving the permit. Council members agreed.

Kathy Stefanski represented the Fort Myers Beach Chamber of Commerce and was grateful to Mr. Persaud for allowing them to have the Roxie trailer on his parking lot rent-free.

Annette described how Mr. Persaud helped her open her kiosk in Times Square by cleaning up properties. She stated she was grateful to him for the opportunity.

Mr. Persaud stated that he went above and beyond to create an agreement that he did not agree with, but it was time to get it done. Mayor Allers was concerned about his language and Mr. Persaud clarified that he disagreed with the monetary settlement but would comply with the agreement.

Town Attorney Vose described the lien process and noted there was no guarantee that the town would get the amount of the lien because it would have to go before a court of law to determine whether the lien was valid. She summarized the three changes discussed and Attorney Spector and Mr. Persaud agreed.

Council Member Woodson moved to approve, as amended, the three items discussed and authorize the mayor to sign once the changes were made; seconded by Council Member King.
The motion carried unanimously.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Woodson requested an update regarding cleaning up Times Square by the pier. Director Kropocek replied that Mr. Persaud obtained permission from the surrounding businesses to install a chain link fence to alleviate any problems.

Council Member Veach questioned whether an aesthetic tool regarding staggering rooflines on a building was available in the code. Planner Propst replied there was nothing in the code to encourage that design and most wanted to build to the maximum height. She was not sure how the town could implement that. Council Member Veach addressed sand spurs and noted if the FWC asked to spray herbicides, the town council could consider the request. He stated that choosing a name for the CWA could be problematic for residents and that the entire Estero Island CWA had a lot of history. Mayor Allers questioned why Mr. Rood was removed from the agenda. Council Member King explained that Mr. Rood was added to the agenda by staff without consulting with MERTF and Mr. Rood was allowed to speak during public comment. Mayor Allers favored adding sand spurs, Australian Pines and renaming the CWA to the MERTF agenda. Council Member Veach was seriously concerned about the invasion of privacy with Form 6. He felt that revealing personal financial information was an invitation to a hacker or burglar. He was leaning toward resigning from the Council before January 1, 2024. Council Member King stated that a council member in Naples was resigning because of the form. Town Attorney Vose added that local officials on the East Coast were also resigning. Council Member Veach stated it was a personal issue for him and had nothing to do with anything else. Town Attorney Vose indicated that the council would have to recognize his resignation and the majority of the council would fill the vacancy until a successor was chosen at the next election.

Mayor Allers thanked Sunstream, Neil Hopgood and staff for welcoming the town and hosting meetings. There was a vacancy on the Citizen's Advisory Committee and he encouraged interested parties to contact Town Clerk Baker.

No items from other members.

XVI. ADJOURNMENT

Council Member King moved to adjourn; seconded by Council Member Veach.
The motion carried unanimously.

The meeting was adjourned at 12:50 p.m.

Minutes adopted as presented, January 8, 2024. Motion by Council Member King and seconded by Mayor Allers. Passed 4-0.

Amy Baker, Town Clerk