Fort Myers Beach Town Council

Bay Oaks Recreation Center
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes **Monday, January 22, 2024** **9:00 AM**

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER
Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King and Council Member Woodson.

II. INVOCATION
Pastor John Antonucci.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA
Council Member King moved to approve the agenda with all items on the consent agenda pulled for discussion; seconded by Council Member Woodson.
The motion carried unanimously.

V. PUBLIC COMMENT
No public comment.

VI. PRESENTATION
A. Matt Caldwell, Lee County Property Appraiser
Matt Caldwell, Lee County Property Appraiser
Mr. Caldwell announced that field staff would be available next Monday and Tuesday to identify which properties were ready to come back on the tax roll and to answer questions regarding the homestead exemption.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS
Council Member Woodson recognized the Woman's Club for the Putt and Pub fundraiser and commented on the huge crowd. She added that the Shrimp Festival would be held this year on March 9th and 10th.
Vice Mayor Atterholt also recognized the Putt, Pub and Crawl. He thanked the President of the club, John Thomas, the sponsors and the volunteers. He thanked

the mayor for organizing last week's meeting with condo presidents and board members. He recognized the condo presidents and board members and thanked them for their perseverance. He recognized residents and visitors who utilized the pedestrian overpass.
Council Member King and Mayor Allers agreed with the previous comments.

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No reports.
Council Member King volunteered to be the liaison for MERTF (Marine & Environmental Resources Task Force). Mayor Allers suggested that they wait for the new council member.

IX. APPROVAL OF MINUTES

A. Draft Town Council minutes - January 8, 2024
Council Member King moved to approve the minutes; seconded by Mayor Allers.
The motion carried unanimously.

B. Draft Town Council Special Mtg with FMB Condo Boards - January 11, 2024
Council Member King moved to approve the minutes; seconded by Mayor Allers.
The motion carried unanimously.

C. Draft Town Council w/Local Planning Agency minutes - January 11, 2024
Council Member King moved to approve the minutes; seconded by Mayor Allers.
The motion carried unanimously.

X. CONSENT AGENDA

A. Estero Island Polling Precinct

An agreement with the Lee County Supervisor of Elections office and the Town of Fort Myers Beach to use the new Town Hall building as a polling location for 2024 elections.

Town Manager Hyatt noted that he was unsure whether a second voting location would be identified on the south end. Town Clerk Baker stated that council meetings on March 18, August 19 and November 4, 2024, conflicted with the polling location. Mayor Allers suggested moving the meetings to Bay Oaks on those dates.

Vice Mayor Atterholt moved to approve the agreement; seconded by Council Member King.
The motion carried unanimously.

B. Special Magistrate Services

Authorize the Town Attorney to negotiate a contract, to be approved by the Town Council at the February 5, 2024 public meeting, with the Florida Department of Administrative Hearings (DOAH) and Monica Schmucker, Esquire, for special magistrate services.

Monica Schmucker reviewed her qualifications and experience.

Vice Mayor Atterholt moved to authorize; seconded by Council Member King. The motion carried unanimously.

C. Special Event: Saturday Services at Bayside Park

Permission to rent Bayside Park on Saturday's from 4:30 pm to 5:30 pm for the month of February 2024

Pastor John Antonucci reviewed his background and explained why he wanted to meet at Bayside Park. Council Member Woodson expressed concern about the disruptive behavior of the other religious person. She also preferred a more central location so people from the south end could attend. Vice Mayor Atterholt noted that the request was only for February and could be treated as a pilot program to see how it went. Council Member Woodson agreed.

Vice Mayor Atterholt moved to grant permission; seconded by Council Member King.
The motion carried unanimously.

D. LAP Grant Agreement

Approve the Town entering into the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502 <u>subject to legal sign-off to amend additional language requested by the State clarifying that the grant is a one-time advance payment</u>, Authorizing the Mayor to legally execute and bind the Town to the terms of this Agreement.

Town Attorney Stuparich requested permission with legal sign-off to amend the agreement in the packet to clarify that it was a one-time advance payment.

Mayor Allers moved to approve the grant agreement, allowing for legal sign-off on final wording; seconded by Council Member Woodson.
The motion carried unanimously.

E. ITB-24-02-EN; Estero Island Beach Sand Truck Haul Project

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS, FLORIDA, ACCEPTING EARTH TECH ENTERPRISES INC. AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER TO ITB-24-02-EN "ESTERO ISLAND BEACH SAND TRUCK HAUL PROJECT", APPROVING AN AGREEMENT BETWEEN THE TOWN AND EARTH TECH ENTERPRISES INC. FOR BEACH SAND WORK IN THE AMOUNT OF $2,698,000.00; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT SUBJECT TO FINAL LEGAL SIGN-OFF, AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.

Town Attorney Stuparich explained that this was on an expedited path and included approval of an agreement for the bid. The contract was subject to legal sign-off. She would like to amend the resolution to authorize an adjustment to the FY2024 budget so that the funds could be spent. She read the title of the resolution.
Environmental Projects Manager Chadd Chustz revisited why the project had to be expedited and Michael Poff from Coastal Engineering expanded on the reasons. Scour holes would be filled, public accesses repaired and graded and the project would begin as soon as February. Property owners who refused to sign easements but changed their minds should contact town staff. Projects Manager Chustz stated that the north end may be a separate truck hall project.

Council Member King moved to approve the resolution as amended;
seconded by Vice Mayor Atterholt.
The motion carried unanimously.

F. Resolution 24-16; Support for Rebuild of FMB Pier

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ENCOURAGING AND PROVIDING SUPPORT TO THE LEE COUNTY BOARD OF COUNTY COMMISSION TO CONSIDER ENHANCEMENTS WHEN REBUILDING THE PIER LOCATED ON ESTERO ISLAND IN ORDER TO BUILD BACK A BETTER AND BOLDER FACILITY FOR THE ENJOYMENT OF THE PUBLIC AND ECONOMIC BENEFIT TO THE COMMUNITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Woodson stated that the Let's Go Fort Myers Beach group proposed a bigger and better pier because what was there was too small.
Since FEMA would only reimburse the county to replace the pier that existed before Ian, a funding strategy would be helpful when presenting to the county commissioners. Vice Mayor Atterholt suggested increasing parking fees at Lynn Hall and Bowditch Parks and applying the revenue stream toward the pier. Mayor Allers clarified that the resolution did not include a funding strategy. Vice Mayor Atterholt supported offering a funding mechanism to the county commissioners. Mayor Allers read the title of the resolution.

Vice Mayor Atterholt moved to approve the resolution with the amendment to allow Council Member Woodson to propose what was discussed to the county commissioners as an option for funding with further public input; seconded by Council Member Woodson.
The motion carried unanimously.

XI. ITEMS REMOVED FROM CONSENT AGENDA

See individual items.

XII. PUBLIC HEARINGS

A. Ordinance 24-02; DCI Rezoning 20230160, 1301 Estero Blvd

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 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 was properly noticed. She swore in those providing testimony. Mayor Allers read the title of the ordinance. Ex parte communications: Council Member King - three emails from owners on Santos; Vice Mayor Atterholt - same emails and conversations with an owner behind 7-11 and the planner assisting 7-11; Mayor Allers - same emails and very familiar with the site; Council Member Woodson - same emails and familiar with the location.

Certified Planner Ken Delander, Civil Engineer Brandon Frey and Civil Engineer Elizabeth Fountain were unanimously approved as qualified experts.

Community Development Planner Sarah Propst reviewed the background of the request as stated on the blue sheet and briefly described the deviations. Staff recommended signage for the parking space that backed into the Palermo Circle right-of-way to be aware of cross traffic. Staff recommended approval with conditions. The owners were looking at ways to work with adjacent property owners regarding the dumpster facing Santos Road.

Planner Delander distributed copies of his presentation. Slides included Project Team; Presentation Overview; Background & Request; Aerial Representation Prior to Ian; Rezoning; Location, Site Design & Compatibility; Concept Plan; Findings & Conclusions; Architectural Elevations; Rendering of Property; Initial Concept Murals; LDC Sections; Deviations; Prior and Proposed Dumpster Enclosures with Type A Buffer and Conclusion.

Vice Mayor Atterholt indicated that the dumpster before Ian was not taken care of. The door was left open and trash was everywhere. Planner Delander replied that the new enclosure was opaque and the owners were committed to keeping the area clean. Planner Frey explained that relocating the existing utilities was a challenge and the location of the dumpster created a faster pickup for the trash service. Mayor Allers requested specifics on why the dumpster needed to be in that area and the dimensions. Planner Delander stated that the dumpster enclosure would be six feet tall. Planner Propst noted that the owners could request a deviation to increase the height to seven feet. Council Member Woodson suggested adding it to a condition for approval.

Mark Herin, Manager of Special Projects, stated the larger store would include larger restrooms, three POS (Point of Sale) stations instead of two and food and beverage options would be expanded. He addressed operations and noted there was no excuse for the condition of the dumpster area shown in the photo. He indicated that he would work with the neighbors regarding their concerns.

No public comment.

Vice Mayor Atterholt moved to approve the ordinance, including staff recommendations and the new deviation of seven feet of the enclosure for the dumpster and schedule it for a second reading on February 5, 2024; seconded by Council Member Woodson.
The motion carried unanimously by roll call vote.

B. Resolution 24-11; VAR20230233, 11 Palmview Boulevard

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230233, REQUESTING A VARIANCE FROM LDC 34-638(D)(1)G. WHICH REQUIRES NEW AT-GRADE MECHANICAL EQUIPMENT TO NOT ENCROACH INTO A SIDE YARD SETBACK AND TO BE LOCATED ON THE SIDE OF THE PROPERTY WITH THE LARGER SETBACK, WHERE THERE ARE DIFFERING SIDE SETBACK WIDTHS, FOR THE PROPERTY LOCATED AT 11 PALMVIEW BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed. Planner Propst confirmed that the applicant received the packet of information.
Planner Propst reviewed the background of the request as stated on the blue sheet. The LPA had unanimously recommended approval. Planner Propst stated that the easement shown in the side yard did not appear to be correct because there was a stormwater easement on the opposite side of the property. If there is an easement, the applicant agrees to move the equipment. The neighbor affected by the equipment supported the applicant's request.
No public comment.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member Woodson.
The motion carried unanimously.

C. Resolution 24-14; VAR20230299, 122 Falkirk St

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230299, A VARIANCE FROM LDC TABLE 34-3 TO DECREASE THE REQUIRED STREET SETBACK BY 11 FEET FROM THE REQUIRED 25 FEET, IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 122 FALKIRK STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. The applicant confirmed receipt of the agenda backup material. Ex parte communications: Mayor Allers - drove by and Council Member Woodson - knows the location. No disclosures from other members.
Planner Propst reviewed the background of the request as stated on the blue sheet. Staff noted that the proposed location would have the least impact on the adjacent properties. The LPA unanimously recommended approval.
Heidi Cawood, applicant, indicated that putting it on the other side would put it in front of the house. She noted that only a corner of the structure crossed the setback and explained why the proposed location made the most sense on her pie-shaped property. She stated the area underneath her house would be open and used for storage.
No public comment.

Council Member Woodson moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously by roll call vote.

D. Resolution 24-12; SEZ20230278, 7400 Estero Blvd - Leonardo Arms

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230278 TO ALLOW RECONSTRUCTION OF A POOL DECK, WALKWAYS, AND FENCE, IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 7400 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: Vice Mayor Atterholt - used to own a condo in the building next door and the people who received the notice supported the variance and Mayor Allers - walked the property. No disclosures from other members.
Planner Propst stated that many postcards were returned and encouraged people to ensure their addresses were up-to-date with the Lee County Property Appraiser. She reviewed the background of the request as stated on the blue sheet and noted the applicant provided a plan that clearly showed what was being replaced. The LPA unanimously recommended approval. Planner Propst clarified that the wall would be removed and vegetation planted.
Miles LeGuard, general contractor, represented the applicant and noted that they were not changing anything besides removing the existing wall. He commented that only the corner of the pool deck ran through the current CCCL (Coastal Construction Control Line).
No public comment.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously by roll call vote.

XIII. ADMINISTRATIVE AGENDA

No items.

XIV. FINAL PUBLIC COMMENT

Eddie Rood, resident, noted that a representative from MERTF was not in attendance. He stated that MERTF recommended the continued use of Imazapyr at their last meeting and that the town work with the FWC (Fish & Wildlife Conservation Commission) to eradicate the Australian Pines outside the critical wildlife area.

XV. TOWN MANAGER'S ITEMS

Town Manager Hyatt spoke to the Lee County Sheriff's office regarding adding officers to Estero and Crescent and Old San Carlos and Estero for $68,200.00. Adding a third officer to the pedestrian crossing would be $34,800.00 for a total of $103,000.00. Staff would be trained by the state to supplement the officers to help with high-impact areas. The gas tax would be used to fund the officers. Town Manager Hyatt will continue conversations with Captain Lalor regarding community policing.

Mayor Allers described an end-of-year appreciation event for crosswalk volunteers and suggested they reinstate that activity.

Town Manager Hyatt requested support for the mayor to speak on behalf of the town to request federal funds on Friday.

Dr. Savarese from the FGCU (Florida Gulf Coast University) water school requested the town's support with a letter regarding a NOAA (National Oceanic & Atmospheric Administration) study on barrier islands, sea level rise and future storms. There was no obligation to the town. The council did not object.

Operations & Compliance Director Frankie Kropocek stated that they would be on generator power until everything gets connected at the new trailers. He was waiting for FP&L to replace a transformer. Decking would be added to the trailers and furniture would arrive within the next week or so.

The new Public Works & Utilities Director, Mark Ashton, introduced himself and reviewed his experience in the area.

XVI. TOWN ATTORNEY'S ITEMS

Town Attorney Stuparich noted the Key Estero issue was moving forward and she thought they were getting ready to go to trial. She will keep the council updated.

She stated that, regarding the Persaud agreement, the town received $250,000.00 and a bond supported by a letter of credit.

A. <u>Resolution 23-182; Town Council Policies and Procedures</u>

Approve recommended changes, inclusive of those from the January 8, 2024 Town Council meeting and approve a resolution entitled:
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.

Town Attorney Stuparich reviewed the changes suggested at the last meeting.

Council Member Woodson moved to approve the changes; seconded by Council Member King.
The motion carried unanimously by roll call vote.

XVII. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Woodson stated that the Putt and Pub raised $70,000.00 and will distribute $55,000.00 to 10 local charities who participated in the event. She thanked everyone who participated. She noted that Resilient Lee would vote to adopt their plan on Thursday and noted it was overreaching, all-encompassing, and not as deep as she hoped it would be. She will attend the meeting and will voice her concerns. Mayor Allers agreed there were not a lot of specifics and thought that was their intent.
Mayor Allers asked if there was support for the town attorney to draft and sign a letter of support regarding a moratorium on funding reserves for the condos.
Council members supported the request. He said they would go to D.C. in early February to meet with legislative members regarding funding. Town Attorney Stuparich indicated that the council had to approve a resolution with a roll call vote to support legislative changes concerning the condo meeting discussions.

Mayor Allers moved to approve Resolution 24-18 regarding a moratorium on reserve funding for Fort Myers Beach condos; seconded by Council Member Woodson.
The motion carried unanimously by roll call vote.

Council Member King stated that the San Carlos Blvd. project had a start date and Chris Speese from the FDOT (Florida Department of Transportation) shared a presentation. Slides included Project Objectives; Project Overview; Project Schedule; Hurricane Bay Bridge; Main Street to Hurricane Bay Bridge; San Carlos Blvd. at Main Street Intersection; Matanzas Pass Bridge; Buttonwood/Prescott Signal Details; Seafarers Alternative with discussions regarding adding another pedestrian overpass and barriers to guide people to the crosswalks; Coordination with Other Local Projects; Project Website and Contact Information. Mr. Speese indicated that construction should begin in April 2024. Council Member Woodson questioned whether the light at Crescent could be changed to a flashing yellow.
Mr. Speese will coordinate with the county to see what could be done.

XVIII. ADJOURNMENT

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

The meeting was adjourned at 12:21 p.m.

Minutes adopted as presented, February 5, 2024. Motion by Council Member King and seconded by Mayor Allers. Passed 4-0.

Amy Baker, Town Clerk