Fort Myers Beach Town Council

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes **Monday, May 20, 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 Safford.
Excused: Council Member Woodson.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the final agenda with item A. pulled for discussion, seconded by Council Member Safford.
The motion carried unanimously with Council Member Woodson excused.

V. PUBLIC COMMENT

Attorney Steven Ramunni represented White Sands Properties regarding the previous motion to forgive or mitigate funds. He stated that a zoning verification letter dated November 2020 indicated that the property was in compliance, so the fines should have stopped then. He calculated that the amount came to about $420,000.00. He requested a reconsideration and that the town manager investigate the discrepancy.
Cindy Johnson, resident and Turtle Time volunteer, noted there were 14 nests with a few false crawls. She distributed a 2014 technical report for responding to questions about turtles. She indicated it was on Turtle Time's website and suggested linking it to the town's website.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Safford applauded the owners of The Whale and stated that the LPA made the right decision.

Vice Mayor Atterholt echoed the above and thanked Beach Talk Radio and others for the day before Mother's Day run. He noted that about $6,500.00 was raised for the Woman's Club. He mentioned the energy and activity downtown at the Farmer's Market.

Council Member King congratulated Dawn & Mike Miller on The Whale groundbreaking. He stated it was a fantastic event and noted people's smiles.

Mayor Allers agreed with all comments.

Curtis Ludwig from Jacksonville, FL was hired as the new Harbormaster. He introduced himself and reviewed his experience in the maritime industry and the Coast Guard.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

VIII. APPROVAL OF MINUTES

A. Draft Strategic Planning Session minutes - April 30, 2024

Council Member King moved to approve the minutes, seconded by Council Member Safford.
The motion carried unanimously with Council Member Woodson excused.

B. Draft Town Council minutes - May 6, 2024

Council Member King moved to approve the minutes, seconded by Council Member Safford.
The motion carried unanimously with Council Member Woodson excused.

C. Draft Management & Planning Session minutes - May 8, 2024

Council Member King moved to approve the minutes, seconded by Council Member Safford.
The motion carried unanimously with Council Member Woodson excused.

IX. CONSENT AGENDA

Council Member Safford moved to approve the consent agenda with Item A. pulled, seconded by Council Member King.
The motion carried unanimously with Council Member Woodson excused.

B. Rescheduling of Ordinance 24-13; Unsafe Structures

Due to advertising timelines, the second reading and final public hearing for Ordinance 24-13 entitled: ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO CLARIFY EXISTING PROVISIONS RELATED TO NOTICE AND EXCEPTIONS; TO AUTHORIZE

NOTIFICATION BY CONSTRUCTIVE SERVICE; TO INCLUDE ATTORNEY'S FEES AND COSTS AND NOTICE EXPENSES TO THE DEMOLITION LIEN AGAINST THE PROPERTY ON WHICH THE UNSAFE BUILDING WAS LOCATED, AND TO AUTHORIZE USE OF THE UNIFORM METHOD OF COLLECTION FOR COLLECTION OF LIENS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE. will need to be rescheduled to a date certain of Monday, June 3, 2024 at 9:00 AM.

Council Member Safford moved to approve rescheduling the ordinance, seconded by Council Member King.

The motion carried unanimously with Council Member Woodson excused.

X. ITEMS REMOVED FROM CONSENT AGENDA

A. Resolution 24-95; Florida Division of Historical Resources Grant

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO APPLY FOR, EXECUTE UPON AWARD, AND ADMINISTER A GRANT FROM THE FLORIDA DIVISION OF HISTORICAL RESOURCES FOR FUNDS IN THE AMOUNT $180,000 FOR REPLACEMENT OF COMPONENTS LOST DURING HURRICANE IAN; AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE RELATED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

Culture, Parks & Recreation Director Jeff Hauge explained that the matching grant would help to rebuild the underground exhibit at the Mound House. He described the exhibit before Ian flooded it.

Council Member King moved to approve the resolution, seconded by Council Member Safford.

The motion carried unanimously with Council Member Woodson excused.

XI. PUBLIC HEARINGS

Town Attorney explained the quasi-judicial procedures. Town Clerk Baker confirmed that all agenda items were property noticed and she swore in those providing testimony.

A. Ordinance 24-14; DCI20230197, 841 Estero Blvd

2nd Reading and Final Public Hearing on proposed Ordinance 24-14 entitled: 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 841 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-0050B.0010 FORT MYERS BEACH; PROVIDING FOR OTHER 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 ordinance. No ex parte communications were disclosed. The applicant confirmed receipt of the agenda and background materials.
Community Development Planner Sarah Propst reviewed the background of the request as stated in the blue sheet.
Ken Gallander from The Neighborhood Company represented 7-11 Inc. They agreed with the staff report, including conditions, and stated the LPA (Local Planning Agency) unanimously recommended approval. He presented an abbreviated presentation beginning with the master concept design, elevations, dumpster deviation and renderings. He indicated it would take approximately 10 to 12 months to go through the development order process and obtain DEP (Department of Environmental Protection) permits. It will take approximately six to nine months for construction.
No public comment.

Council Member King moved to approve the ordinance as presented and schedule a final reading and adoption on June 3, 2024, at 9:00 a.m., seconded by Council Member Safford.
The motion carried unanimously by roll call vote with Council Member Woodson excused.

B. Resolution 24-96; VAR20240084 6140 Court St

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240084, REQUESTING A VARIANCE FROM LDC 34-1174(b). TO ALLOW A PICKLEBALL COURT, CLOSER TO STREET THAN THE PRINCIPAL BUILDING IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 6140 COURT 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. All members disclosed receiving two emails against the proposed project. The applicant confirmed receipt of the agenda and background materials.
Community Development Senior Planner Jason Smalley reviewed the background of the request as stated in the blue sheet. He noted the LPA unanimously recommended approval. Planner Propst described where the two email authors lived in relation to the applicant. Senior Planner Smalley indicated that a landscaping plan was included in the application and would help buffer sounds.
Kara Stewart represented the applicants and reviewed the enhanced landscape plan. She commented that the applicant agreed to comply with the noise ordinance. Ms. Stewart stated that the use of a pickleball court on the property was allowed by right. Vice Mayor Atterholt questioned whether the hours of use could be restricted. Ms. Stewart repeated that the applicant would comply with the noise ordinance.

Cary Kledzik, applicant, stated that he would not play before 7:00 a.m. He did not think the people complaining lived close enough to be affected, but he said they would do whatever they had to do to build the court legally. Laura Kledzik, applicant, indicated that the immediate neighbors supported the project. She added that they agreed to play between 8:00 a.m. to 9:00 p.m. Council Member Safford thought restricting hours was ridiculous and Council Member King agreed, especially with the enhanced landscape plan. Council Member Safford suggested sunrise to sunset.
No public comment.

Council Member King moved to approve the resolution with conditions of approval from the LPA, seconded by Council Member Safford.
The motion carried unanimously by roll call vote with Council Member Woodson excused.

C. Resolution 24-97; SEZ20240069, 830 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20240069 TO ALLOW FOR THE REPLACEMENT/REPAIR OF A SUN DECK, POOL PATIO, RETAINING WALL, AND FENCE IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 830 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed.
Senior Planner Smalley reviewed the background of the request as stated in the blue sheet. He noted that the original foot showers and regular showers were located landward of the CCCL (Coastal Construction Control Line) and were not included in the application.
Matthew Bert, General Manager of the Edison House, stated that they wanted to repair what was there before Ian. He noted the pool shell was intact, but it had to be re-piped.
No public comment.

Council Member King moved to approve the resolution, seconded by Council Member Safford.
The motion carried unanimously by roll call vote with Council Member Woodson excused.

D. Resolution 24-98; VAR20240088, 614 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR20240088, A REQUEST FOR TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED STREET SETBACK BY 17 FEET 6 INCHES FROM THE REQUIRED 25 FEET, AND TO REDUCE THE REAR SETBACK BY 12 FEET 1 INCH FROM THE REQUIRED 20 FEET, IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 614 ESTERO BLVD; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. He noted they had not received any letters of objection.

Vice Mayor Atterholt moved that the written information in the agenda be entered into the official record and moved to approve the resolution, seconded by Mayor Allers.

The motion carried unanimously by roll call vote with Council Member Woodson excused.

XII. ADMINISTRATIVE AGENDA

A. Bid Protest Hearing, ITB-24-03-EN Estero Island Beach Nourishment and Hurricane Recovery Project

Resolve the Bid Protest for the Estero Island Beach Nourishment and Hurricane Recovery Project ITB-24-03-EN received from Callan Marine, Ltd

Mayor Allers announced that this was the time for the bid protest hearing. John Sullivan, President of Callan Marine from Galveston, Texas, distributed a presentation. He stated they were the number two bidder and his company had nothing but respect for Ahtna. He described his equipment and noted that Ahtna was not qualified to safely do the project because they were inland dredgers. His slides included the Coast Guard Approved Offshore Vessel Dredge General MacArthur versus the Dredge Katie John of Ahtna Marine.

He displayed a slide explaining why utilizing an inland dredge to work offshore is not responsible, nor is it consistent with industry best practices. Vice Mayor Atterholt questioned whether there were state and federal regulators who determined whether a job was safe for the appropriate equipment or if it was his professional opinion. Mr. Sullivan replied that it was professional best practices, but Ahtna was not violating codes or breaking rules. He displayed Bid Results & Equipment Comparisons between four companies, Ahtna's Past Performance (from Bid Documents), Calculated Production Rates and Duration for Ahtna to Complete Estero Island Beach Renourishment, Dredging and Beach Placement Timeline for Ahtna and a letter from Kyle D. Johnson, former CEO of Great Lakes Dredge & Dock. Mr. Sullivan disagreed with Michael Poff from Coastal Engineering regarding his support for Ahtna. He explained why his company and equipment were more qualified for the project and stated that the town needed to request more money to do the project right.

He also felt Ahtna's budget was wrong, especially based on the other bids. He suggested pausing for two weeks to determine whether more funds were available to the town and he offered to help make phone calls. Mr. Sullivan addressed why he felt Ahtna's bid was not responsive.

Town Attorney Vose pointed out that since the town's consultant said that Ahtna could do the work and do it within the timeframe involved, she did not know how she would be able to defend the town against Ahtna's lawsuit.

Since it was a contractual issue, the town's exposure would be significant.

Wes Gammons, Vice President of Ahtna Marine Construction, explained how they would do the project with appropriate sized equipment and described past jobs successfully completed.

Michael Poff from Coastal Engineering stated that they did their due diligence and based on their independent assessment, he felt that Ahtna had the equipment to complete the project within the timeline.

Mr. Poff reviewed his education and experience in coastal engineering to qualify as an expert.

Vice Atterholt moved to approve Michael Poff as an expert witness, seconded by Mayor Allers.

The motion carried unanimously.

Mr. Poff listed the entities he contacted regarding Ahtna's past performance on multiple projects. He noted that Ahtna has worked in the area for the past 11 years and was familiar with the island. He indicated that Ahtna was ready to begin in June.

Town Attorney Vose stated the town was bound by the bid documents and by what the experts said. She recommended denying the protest.

Vice Mayor Atterholt moved to deny the bid protest, seconded by Council Member King.

The motion carried unanimously by roll call vote with Council Member Woodson excused.

B. Resolution 24-99; ITB-24-03-EN Beach Nourishment Ahtna

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND AHTNA MARINE AND CONSTRUCTION, LLC TO COMPLETE THE ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; ROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Public comment:

John Sullivan from Callan Marine claimed that since Ahtna's bid was not responsive, the town was not bound by the bid documents. He stated his company would not sue the town, but he felt they were making a mistake. Public comment closed.

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

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt stated that he continued to respond to FEMA (Federal Emergency Management Agency) regarding the NFIP (National Flood Insurance Program) and would meet with them this week. The preliminary budget will be presented at the next council meeting in June. He added that Director Jeff Hauge would be running the town in his absence.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford noted that the beach bar and surrounding lots would have difficulty building back because the FAR (Floor Area Ratio) was only 1.0 and he felt they should address the issue. Planner Propst described the range of FAR (Floor Area Ratio) in different zoning districts. She noted they could increase the FAR; however, people managed to build on those lots before the hurricane.
Council Member Safford suggested adding the topic to the next M&P. Mayor Allers agreed.
Vice Mayor Atterholt suggested adding a public conversation to an M&P regarding hurricane passes and plans for reentry. He noted that the ad hoc committee to preserve the beach school met last week and that the school was making good progress despite funding challenges. He described starting a VPK (Voluntary Prekindergarten Education) program to be operated by a private vendor. He indicated they would be allowed to use town facilities at a discounted rate. Town Manager Hyatt offered to explore options.
Council Member King noted residents were concerned about the beach accesses being roped off on the south end. Environmental Projects Manager Chadd Chustz commented that he heard complaints from condos regarding the FWC (Fish & Wildlife Conservation Commission) buffer zones for the nesting birds. He stated that he would follow up with FWC and the condo owners. Council Member King also heard a concern regarding waiving parking to help restaurants off-season. He proposed a few hours of free parking for lunch and dinner downtown during the summer. Council Member Safford supported the idea except for holidays. Vice Mayor Atterholt noted not many people used those parking spots after 5:00 now, so it may offset the minimal fiscal impact. Operations & Compliance Director Frankie Kropacek stated that he was on board and it would be great for the town. He described ways the town could facilitate making the change.

Vice Mayor Atterholt suggested offering blocks of free parking until October 1. Mayor Allers felt it would be a logistical nightmare, but Director Kropacek did not think it would be that difficult or impact the revenue that much. Director Kropacek will gather data and meet with the Finance Director regarding the revenue stream. Mayor Allers was concerned about changing FAR calculations and giving away intensity and density by right. Community Development Planner Jason Green will look into potential ramifications. Planner Propst did not think they risked overbuilding with the limitations in place. She added that the LDC (Land Development Code) required that FAR be calculated below base level. She discussed the multiplier concerning the Myerside project.

XVII. ADJOURNMENT

Council Member King moved to adjourn, seconded by Council Member Safford. The motion carried unanimously.

The meeting was adjourned at 11:35 a.m.

Minutes adopted as presented, June 3, 2024. Motion by Council Member King and seconded by Mayor Allers. Passed 5-0.

Amy Baker

Amy Baker, Town Clerk