Fort Myers Beach Town Council

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

Minutes **Monday, June 17, 2024** **9:00 AM**

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Safford and 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 the consent agenda pulled for discussion, seconded by Council Member Woodson.
The motion carried unanimously.

V. PUBLIC COMMENT

Becky Weber, resident, stated she had stormwater issues and her home on Curlew has flooded three times since Ian. She asked the town council to approve additional funds for Tetra-Tech to fix the drainage issues. She asked the town to fill an area in the easement in front of her house.
Robin Capela, resident, questioned the town council about how many people they thought the town could accommodate, what their vision was and whether they were making decisions based on statistics. She asked why they were rushing to redevelop while about 60% of the condos were not back yet. She noted the traffic was already bad and asked the town not to give away any assets. She commented that they talked about trying to help with traffic while voting to approve overcapacity.
Mike Miller, resident, listed his flooding issues on Bahia Via due to the drainage not working. He reiterated his comments regarding London Bay.

They planned to use a residential canal for commercial traffic and transport people to their resort for dining and shopping. He stated that London Bay should acquire a dock at Fish Tale Marina and shuttle people from Santini Plaza. He indicated that people would notice the shops and restaurants in town and may decide to shop there rather than stick with London Bay Resorts. He commented that London Bay needed to figure out how to support local businesses and not just themselves. Angela Amos, resident, commented on short-term rentals in residential areas. She described her full-time residential neighborhood before the hurricane and after the hurricane. She stated new rentals were coming in almost every weekend and they did not know the rules. She had to call the Sheriff's Office for noise and indicated it was constant. She asked the town council to take care of the people who lived there and preserve their quality of life.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked Beach Talk Radio for the pub crawl over the weekend to benefit the Fort Myers Beach Community Foundation. They have raised about $3,000.00 so far and the goal is $5,000.00. He congratulated the mayor and his wife and the vice mayor and his wife on their wedding anniversaries.

Vice Mayor Atterholt recently attended the grand opening of the Beach Baptist Church and recognized them for the volunteers' hard work and struggles. Last Sunday, he attended a service at St. Peter Evangelical Lutheran Church in the parking lot under a tent. He noted it was a beautiful service and recognized their commitment and faith.

Council Member Woodson recognized the town staff for the fitness court. She congratulated herself and her husband on their wedding anniversary.

Council Member Safford thanked the waste management team for their amazing job cleaning up during the recent rainstorm.

Mayor Allers recognized and thanked Council Member Safford for completing the Institute for Elected Municipal Officials. He presented the certificate to him.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

A. Tier 1 Project Update - Andrew Sitework

Project Manager Chad Baker with Andrew Sitework summarized the project and noted they were 25% complete. Slides included two maps with Phases A, B, C and D and Streets within the Phases. He projected the final completion of Phase A to be November 2024, Phase B to be completed in March 2025, Phase C in February 2026 and Phase D in October 2025. The goal was to have the Tier 1 project completed in February 2026, which was two years ahead of schedule. He addressed the latest drainage issues in public comment and indicated the duck bills would help and the drainage structures were bigger to transfer more water.

Operations & Compliance Director Frankie Kropacek indicated that additional drainage may be needed and they were trying to pinpoint problem areas. He encouraged residents to contact him about drainage issues.

Mr. Baker stated that they received approval from the Department of Health to tie residents on Williams Dr., Bahia Via, Sterling Ave. and Seminole Ave. to the new water main and once the connections were complete, they could begin storm improvements. They were working on the water main for Phases C and D; storm improvements will begin after that is completed,

B. Estero Island Lighting Project Update - Florida Power & Light (FPL)

Mr. Davis stated all the materials had been ordered and the underground materials were onsite. Permits were resubmitted and he felt the issues would be resolved by the end of the month. A pre-construction meeting will be scheduled with stakeholders before construction. The tentative start date was July 15, 2024, with a completion date within 15 months. The project will start at Estero and Estrellita Dr. and proceed north. Installation of the poles will begin around August and the lights will be installed after the hurricane season. He estimated 405 new poles would be installed on Estero, 295 on side streets and 30 downtown. He thought the poles would be about 100 feet apart from each other and the existing poles would be replaced. New lights on the side streets will be added to the lights already there and will match.
The old light fixtures will be taken down. Mr. Davis will forward a map of where the poles will be located.

VIII. APPROVAL OF MINUTES

A. Town Council - June 3, 2024

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

B. Management & Planning Session - June 6, 2024

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

IX. CONSENT AGENDA

A. Special Event - Farmer's Markets

Shop Local Productions is requesting to have Farmer's Markets at: Santini Plaza from November 5, 2024 - April 4, 2025, and Times Square from September 9, 2024 - May 31, 2025

Vice Mayor Atterholt stated this was to approve the Farmer’s Market in Santini Plaza and Times Square.

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

B. Resolution 24-130, Town Hall Trailer Contract Amendment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ITS PRIOR APPROVAL OF A CONTRACT WITH KIRKWOOD ELECTRIC IN THE AMOUNT OF $73,620.00 FOR WORK NEEDED FOR THE NEW TOWN HALL TRAILERS TO INCREASE THE CONTRACT AMOUNT BY $15,374.00 FOR ADDITIONAL NEEDED WORK, FOR A TOTAL CONTRACT PRICE OF $88,994.00; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Manager Hyatt explained that the cost increased because of work needed on the rec center and concession stand.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures. Town Clerk Baker confirmed that all agenda items were property noticed and she swore in those providing testimony. Mayor Allers disclosed a conflict of interest with Items E. and F. He will submit a Form 8B to the Town Clerk for each item.

A. Ordinance 24-17; Amending Advisory Committee Requirements

1st Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” AND SECTION 2-96 “REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS” OF DIVISION 2 “PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES” OF CHAPTER 2 “ADMINISTRATION” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING RESIDENCY AS A QUALIFICATION REQUIREMENT FOR THE TOWN’S AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS; ELIMINATING DUPLICATIVE LANGUAGE; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on August 5, 2024 at 9:00 AM.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich stated that the rules recently amended by the town council contradicted the residency requirements in this ordinance. She noted the rules would be brought back at the second reading to make both documents consistent. Council Member Safford questioned whether there was a distinction between residency or owning property. Town Attorney Stuparich replied that the removal was no longer a registered voter within the town's jurisdiction or a property owner. Council Member Safford confirmed that owning property was insufficient; however, Council Member King stated that a person appointed to the LPA was a property owner who lived in Estero. Town Attorney Stuparich will look into it.

Council Member Safford noted an injunction regarding Form 6 requirements on page 67. Town Attorney Stuparich said she would change the language for the second reading.
Public comment:
Ellen Vaughan, resident, was troubled about removing a deep association with the island and being allowed to participate on a committee. She was concerned that someone with only a financial interest in the island could significantly influence decisions brought forward by committees.
Paula Kiker, who owned a building in town, commented that new ordinances typically affected incoming people and not the current committee membership.
Public comment closed.

Council Member King moved to move it to a second reading, seconded by Vice Mayor Atterholt.
The motion carried unanimously by roll call vote.

B. Ordinance 24-16; Amending Schedule of Uses (Sandy Bottoms)
Second Reading and Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING AND RESTATING ORDINANCE NO. 22-06 TO AMEND THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 2301, 2307 & 2311 ESTERO BLVD. AND 111 & 121 MANGO ST., GENERALLY IDENTIFIED AS STRAP NUMBERS 219-46-24-W3-0110D.0010, 19-46-24-W3-0120E.0010, 19-46-24-W3-0120E.0020, AND 19-46-24-W3-0120E.0030 FORT MYERS BEACH; AMENDING THE MASTER CONCEPT PLAN FOR THE RESTAURANT USE(S); PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL AND DEVIATIONS, AND OTHER CLARIFICATION AS NECESSARY; PROVIDING FOR REPEAL, 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 Senior Planner Jason Smalley stated that the request is generally the same as the first reading. Changes to conditions of approval for deviations have changed. The applicant asked to add a 2,750-square-foot tiki hut, which would cover the front lawn. Today, there were 9 deviations with 12 conditions of approval as stated on the blue sheet. He distributed and reviewed a clarification of the schedule of uses and hours of operation.
Ken Gallander of The Neighborhood Company represented the applicant. His presentation included the Master Concept Plan, Restaurant Service Bar and Condition #6. He stated that they agreed with the staff report.

Public comment:
Susan Bonfigli, resident, commented that she initially supported the restaurant, but now it appeared that the focus was on becoming an entertainment venue and bar well past typical dinner hours. She was surprised that they operated with a special event permit on Memorial Day and described how loud the music was. She stated that the acoustic guitar at 10:00 a.m. resonated through her home, disrupting her peace. She requested that the amplified music request be denied, and indoor music be restricted. She requested that the applicant reconsider the venue's nature and a restaurant with modest music was welcome.
Public comment closed.
Mr. Gallander noted that the permanent structure would not be open. Mike Miller distributed information and noted the decibel levels were checked inside the tent and they were well under the code on the edges of the property. He stated that Sandy Bottoms was primarily a restaurant that served alcohol.

Council Member King moved to approve the ordinance with conditions in the staff report, seconded by Council Member Woodson.
The motion carried unanimously by roll call vote.

C. Ordinance 24-15; DCI20230246; 125, 131-151 School St and 2661-2681 Estero Blvd (Myerside)

Second Reading and Public Hearing of an Ordinance 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 125, 131-151 SCHOOL ST AND 2661-2681 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230; 19-46-24-W3-0020C.0270; 19-46-24-W3-0020C.0290 FORT MYERS BEACH TO ALLOW A MIXED USE DEVELOPMENT INCLUDING LODGING, LIVE/WORK UNITS, RETAIL, AND RESTAURANT USES; 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. Ex parte communications: all members disclosed receiving emails for and against the project. Vice Mayor Atterholt and Council Member Safford disclosed conversations with The Neighborhood Company and the applicants. The applicants confirmed receipt of the agenda and background materials.
Community Development Planner Sarah Propst reviewed the background of the request as stated on the blue sheet. She noted that they asked for an additional deviation today to allow a Floor Area Ratio (FAR) of 1.3 to allow larger live/work units. The applicant provided additional conditions based on conversations at the first hearing.
Attorney Noel Davies from Davies Duke represented the applicants. He stated they were consistent with the policies and objectives of the existing Boulevard future land use designation.

Ken Gallander from The Neighborhood Company reviewed Public Benefits, Items to Address, including Parking, Traffic Mitigation and Live/Work Units and Conclusion.
Vice Mayor Atterholt wanted to include language to require an MD, Physician's Assistant or Nurse Practitioner to be on staff at the Medical Clinic and Urgent Care Center so prescriptions could be written. Also, a licensed Physical Therapist would be required on staff in Rehabilitation Clinics. He did not think that a Medical Spa or Chiropractor should be on the list to share parking spots.
Council Member Woodson commented that other public services were needed, like hair stylists. Vice Mayor Atterholt responded that if the applicant had difficulty attracting medical practitioners, they could petition the town council to allow other services.
Beverly Milligan, applicant, stated that every unit would receive membership at Bay Oaks.
Mayor Allers stated that the applicants were asking for more intensity and less parking this time without giving anything back. He noted that he never received an answer regarding the number of units going up to 45 from 42. He felt they were asking the town to make things work for the applicants.
Mr. Gallander stated that 42 units were stated pre-application and after evaluating the project, they determined a need for 45 units. He did not think they were asking for more this time. The increase in FAR was based on conversations from the first hearing regarding the size of the live/work units.
Mayor Allers commented that they were not willing to decrease anything.
Patrick Vanasse from The Neighborhood Company stated that the town council asked them to increase those units, and they identified multiple parking options. The town council also offered shared parking at Bay Oaks if the applicants provided medical professionals in their building. He noted that he heard from the town council that having medical professionals on the island was a public benefit. Mayor Allers agreed it was a public benefit, but they needed to give something up because the shared parking took away from the public. He noted they did not offer to give up units, but they wanted the community to give them more to make their public benefits a reality. Mr. Vanasse responded that they did not ask for parking at Bay Oaks and did not think the town was giving up anything for them. Mayor Allers questioned whether there were parking agreements in place. Mr. Vanasse replied that valet parking was an option, and the library and church were open to shared parking. He felt confident that the applicants would be able to address any shortcomings.
Mr. Vanasse addressed the height deviation of two feet. Mr. Gallander noted the units would start at less than 400 sq. ft. and go up from there. Planner Propst explained how the applicants got to a 5.6 multiplier and stated it was allowed through the deviation process. She added that many developments made similar requests in the past. She clarified that the 5.6 multiplier was compliant with the current comp plan and felt the request was appropriate.
Mr. Vanasse stated that the equivalency ratio was consistent with the comp plan and they were asking for the same mechanism Margaritaville and others used.

Public comment:

Bill Veach, resident, felt that if there was any public benefit, it should be proportional to the benefit the applicants were getting. He thought it was odd that the staff recommended denial of the last CPD but recommended approval for this one since it asked for more. He did not think the list of public benefits included any commitments. He stated that trying to have a medical-themed facility was a public benefit for getting additional units. Now, for them to say that they wanted something additional from the town to make that happen was double-dipping. He questioned whether they would have sufficient parking if they did not have the extra units. He felt it was too big of an ask.

Paula Kiker, business owner, was in favor of the project and stated it was monumental because this was the first development since Ian. She indicated their decision would divide many of them, but it was in the town council's hands, and the town would be okay. She stated that the beach would always be a tourist town, and there would always be a divide between commercial businesses and residents' wants and needs. She commented that the project was a boutique gem for the island and a huge financial investment.

She thanked everyone for what they had done to bring the town back.

Ron Fleming, resident, stated that Ms. Kiker stole his speech. He was in favor of the project, but it was a difficult decision. He remembered what Myerside looked like before Ian and how the applicants cleaned it up. He said this project was a good change and encouraged the town council to approve it.

Ellen Vaughan, resident, supported the project and agreed with Ms. Kiker and Mr. Fleming. She felt that what the applicants did for the property before Ian should count for something. She noted that the applicants also provided tickets to their guests for the Mound House.

Todd Capela, resident, stated the island would not shrivel up and die if they did not rebuild quickly. He did not see a lot of public benefit and questioned how many people would use the one doctor on the island. He felt the request broke many rules and agreed with Mayor Aller's concerns.

Barbara Hill, resident, agreed with Mayor Allers and thought he was correct. She loved the resort's design but felt the seven deviations were more than she could approve. She did not support the density or setback on Estero Blvd. Leasing ground floor units for medical providers as a public benefit was based on supply and demand. She did not think the applicants would turn away other businesses to keep space open for medical providers. She did not like the parking issues and did not approve of it.

Steve Johnson, resident, felt it was a key day for the town because it opened Pandora's box. He felt the project was too intense and recommended that they stay as close to the comp plan as possible. He questioned why the public was not involved with the changes to the comp plan before it was sent to the state. He stated that although variances were allowed, the town council did not have to grant them.

Chris Smutz of the London Bay Development Group and owners of the Outrigger parcel supported the project and asked that they consider the island-wide economic impact of the project. He stated that the economic impact would increase property values and tax revenue, generate additional

sales and tourism taxes, and lead to job and wage creation. He felt that approving the project would send a message that the town council was committed to rebuilding the town for future generations.
Robin Capela, resident, stated that they were not a wasteland and should slow down to think about things. She felt the applicants could give up a little and agreed with Mayor Allers. She thought that they were giving parking away and asked that they rethink the project.
Public comment closed.

Attorney Davies reiterated that they were consistent with the comprehensive plan, and it was appropriate to approve the project.
Bev Milligan, applicant, stated that they had been open and public about their project since the beginning and thanked everyone for their support.
Council Member Safford questioned how medical providers created traffic and commented that trips over the bridge caused traffic. Mayor Allers pointed out there was still traffic on Estero Blvd. because one had to drive to the office. Council Member Safford did not think a mid-island business would create a lot of traffic. He did not know why the government was involved in telling businesses how many parking spots they had to have because the market would dictate what happened with their parking. He added that they could not make them have a doctor's office in their building. Council Member Safford had four units and a gift shop and only had parking issues during the holidays in season, but he figured it out. He questioned why they continued to make parking requirements if they wanted to reduce traffic. Mayor Allers responded that more units in Council Member Safford's hotel increased the number of people driving on the island to stay in his hotel.
Council Member Woodson agreed with Council Member Safford and believed that the applicants addressed everything the town council asked at the last hearing and listed some items. She agreed that they could not demand that they have medical providers, although they had talked to medical professionals who were on the island before Ian. She complimented the applicants for a job well done.
Vice Mayor Atterholt appreciated the civility on both sides of the issue. He indicated that essential goods and services were a key part of their quality of place on Fort Myers Beach. Having a grocery, pharmacy and gas on the island was critical to him for quality of life. The public benefit piece for him was something the applicant had been consistent about from day one and that was the health and wellness focus. He listed the healthcare providers lost because of Ian and noted those losses affected the quality of life on the beach. He suggested shared parking to further incentivize the applicants to encourage medical providers to come to the beach. He supported the project.
Council Member King clarified that regarding slowing things down, they do not control who comes before them. As far as density, he questioned whether everyone knew what it meant. He noted they had a smaller population than what they had in 1990 pre-Ian. He added that Lee County indicated they had 42.9% of open hotels and rentals and the Chamber broke it down to less than 1,800 hotel and vacation rental rooms available, down from 4,315 pre-Ian.

He looked at the project in a positive light because it would increase the tax revenue.
Mayor Allers complimented the applicants for their project design, but it did not change the numbers for him and what it would do. He stated that if they applied the same numbers to another property down the road, 5.6% of what they could build by right would result in 840 hotel rooms next to a residential neighborhood. He questioned how they could deny that project if they approved this one. He commented that what was being built there by right was already three times more than what was there when the property was purchased. He noted that there were only a couple of items he considered a public benefit and felt the project would have an adverse effect on the area. He discussed the strain on the infrastructure. He did not support the project but wished the applicants the best.

Council Member King moved to approve the ordinance with the conditions listed in the staff report, seconded by Council Member Safford.
The motion carried 4-1 by roll call vote, with Mayor Allers dissenting.

D. Resolution 24-131; VAR20240071 - 1250 Estero Blvd (Cottage/Shuckers)
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS VAR20240071 CONSISTING OF FIVE (5) VARIANCES FROM THE FOLLOWING LDC SECTIONS: 1) SECTION 34-674(a)(1)(b) [BUILD-TO-LINE MAXIMUM SETBACKS], 2) SECTION 34-675(b)(3) [BUILDING HEIGHT], 3) SECTION 34-676(a)(4) [PARKING SPACES], 4) SECTION 34-676(b) [REAR PARKING], AND 5) SECTION 34-676(d) [LOCATION OF ENTRANCE WAYS, FOR PROPERTY LOCATED AT 1250 ESTERO BLVD. ALSO IDENTIFIED BY STRAP# 19-46-24-W4-0070F.0010, TO ALLOW FOR REDEVELOPMENT OF A RESTAURANT/BAR; AND PROVIDING FOR AN EFFECTIVE DATE.
Mayor Allers read the title of the resolution. Ex parte communications: Council Member King - familiar with the site and met with the developer a long time ago; Vice Mayor Atterholt - conversation with The Neighborhood Company and a meeting with the applicant a long time ago; Mayor Allers - met with The Neighborhood Company and spoke to the owner; Council Member Woodson - watched the LPA meeting and saw the first renditions of the plan months ago and Council Member Safford - familiar with the site and met with The Neighborhood Company.
The property owner confirmed receipt of the agenda and background materials.
Senior Planner Smalley reviewed the background of the request as stated on the blue sheet. He noted the applicant provided 16 parking spaces, an 85% reduction. The LPA recommended unanimous approval.
Attorney Noel Davies represented the applicants. Patrick Vanasse from The Neighborhood Company clarified that although they had unanimous approval from the LPA, the 10-day grace period for objections ended on the 21st.

If a complaint was filed, the applicants would have to wait until August to come back to the town council.
Joe Orlandini, applicant, described the interior of the building and noted they were going to try to keep the character of the old building. He added that they would keep the favorites from the old menu while adding new items. He stated that he met with the neighbors and intended to keep the sound contained. He indicated the ground floor on the beach side would be completely open, the dumpster area would be enclosed, and vegetation would be planted. He clarified that the architects drafted the third floor as open, but the intent was to provide an enclosure to contain the sound. One elevator served patrons and the other was for food. Mr. Orlandini described how they created resiliency in the building design.
Mr. Vanasse explained that the increase in total square footage was associated with the back of the house and the patron space was about the same square footage.
Senior Planner Smalley clarified that 16 physical parking spaces were provided, plus one bike rack, which was equivalent to 17 spaces. Planner Propst added that the code in the downtown zoning district allowed a 67% reduction, so they got a 33% reduction, but they were asking for an 85% reduction. She stated that 67% of 114 spaces were 76 spaces. Mayor Allers discussed the parking calculation requirements for bars versus restaurants and noted the previous establishment had 28 spaces.
Public comment:
Mike Miller, resident, supported the restaurant but was concerned about the noise. He agreed with LPA Chair Cereceda that they had to be responsible for their actions, so he decided to file to remove his special exemption for a noise ordinance for the same reason.
Public comment closed.

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

E. Resolution 24-133; VAC20240030- Pink Shell Resort Beach Access Easement Relocation

A RESOLUTION VACATING BEACH ACCESS POINT #42 LOCATED OVER REAL PROPERTY OWNED BY CAPTIVA VILLAS DEVELOPMENT LLC, GENERALLY LOCATED AT 200 ESTERO BOULEVARD, FORT MYERS BEACH; ACCEPTING AND APPROVING A COMPARABLE REPLACEMENT EASEMENT TO BE LOCATED ON REAL PROPERTY OWNED BY JABO, LLC, SUBJECT TO TERMS AND CONDITIONS AS CONTAINED IN A SECOND AMENDED AND RESTATED PEDESTRIAN RELOCATION AND VIEW EASEMENT AGREEMENT; DIRECTING THE TOWN CLERK TO RECORD THIS RESOLUTION; AUTHORIZING THE MAYOR TO SIGN ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: all members disclosed receiving at least one email opposing the project except for Council Member Safford. Mayor Allers recused himself from this item.
The applicant confirmed receipt of the agenda and background materials.
Planner Propst reviewed the background of the request as stated on the blue sheet. She noted that the view corridor would remain in the original location. She explained that the town and county were jointly responsible for the easement.
Attorney Sarah Spector with Roetzel & Andress represented the applicants. The slides included a map, and she pointed out the boundaries of both properties and identified the proposed beach access. The hours of operation would be from 8:00 a.m. to 11:00 p.m. while the resort was open, and restrooms would be available to the public. She stated that the easement would extend to the mean high watermark as requested by the county and the town would not have any obligation related to the replacement easement. Attorney Spector reviewed the application. She acknowledged the email opposing the resolution and noted the concern was alleviated. She explained that a fence had to be installed around the pool after the hurricane for safety.
Bob Boykin, owner of the Pink Shell, stated that he was concerned about having the beach access open 24/7 since the pool was there. The gate would remain open during special events but closed at 11:00 p.m.
No public comment.

Vice Mayor Atterholt moved to approve the resolution, seconded by Council Member Safford.
The motion carried 4-0, with Mayor Allers recused.

F. Resolution 24-13; SEZ20230226, 275/322, 200 Estero Blvd and 192 Estero Blvd Common Element (Pink Shell)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230226 TO ALLOW RECONSTRUCTION OF A POOL DECK, CABANAS, FENCE, IRRIGATION SYSTEM AND CHICKEE HUTS IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 275/322, 200, AND THE COMMON ELEMENT OF 192 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: all members disclosed receiving emails at one time except for Council Member King.
Planner Propst reviewed the background of the request as stated on the blue sheet. She noted that staff received letters of support and opposition from the adjacent property owners. The property owners supplied a landscape plan for the pool deck, side yard event area and an emergency evacuation plan as requested by the LPA.

Attorney Sarah Spector of Roetzel & Andress represented the applicants. Slides included Request, Depiction of Resort, Landscaping Plan, Clarification, Picture of tiki huts and Special Exception Criteria.
No public comment.

Vice Mayor Atterholt moved to approve the resolution, seconded by Council Member Safford.
The motion carried 4-0, with Mayor Allers recused.

G. Resolution 24-134; SEZ20240126, 7400 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENY SPECIAL EXCEPTION SEZ20240126 TO ALLOW RECONSTRUCTION OF STORM DAMAGED INFRASTRUCTURE IN THE EC ZONING DISTRICT, INCLUDING: A PARTIAL PARKING LOT, A NEW ALUMINUM RAIL FENCE ALONG THE SEAWALL, AND NEW FENCE WITH GATE AROUND THE SOUTH GARDEN, 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. No ex parte communications were disclosed.
Eli Lee reviewed his experience in land use planning.
Vice Mayor Atterholt moved to qualify Mr. Lee as an expert in his field, seconded by Mayor Allers.
The motion carried unanimously.
The property owner confirmed receipt of the agenda and background materials.
Mr. Lee reviewed the background of the request as stated on the blue sheet. The staff recommended denial of the fence and gate because they were new, fully in the EC (Environmentally Critical) zone and not required by the building code. The LPA recommended approval.
Myles LaGarde of South Shore Construction explained that the seawall was not there before Ian and a riprap apron would be added. The applicants did not want people walking on the seawall and possibly falling on the rocks below. The fence would be 42 inches per code and might be removed after the renourishment project is complete.
No public comment.

Vice Mayor Atterholt moved to approve the resolution with the condition that the fence on top of the seawall be removed if there are no longer any public safety concerns post beach renourishment by a determination by the Operations & Compliance Director, seconded by Council Member Woodson.
The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

A. Resolution 24-126; Authorizing Use of ARPA Funds to Reimburse Emergency Fund

A RESOLUTION OF THE TOWNCOUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING 1) THE USE OF $411,481 OF AMERICAN RESCUE PLAN ACT (“ARPA”) FUNDS TO REIMBURSE THE EMERGENCY FUND FOR EMERGENCY EXPEDITURES INELIGIBLE FOR REIMBURSEMENT BY FEMA, AND 2) AMENDMENTS TO THE FISCAL YEAR 2024 BUDGET RELATED TO THIS REIMBURESEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Finance Director Joe Onzick explained that the resolution was for the remnants of expenditures immediately after Ian. Tidal Basin realized the documentation was insufficient for FEMA reimbursement. Fortunately, ARPA funds were available and the remaining $800,000.00 in the fund had to be used by the end of the calendar year.

Mayor Allers moved to approve the resolution, seconded by Council Member King.
The motion carried unanimously.

B. Resolution 24-127, Adoption of Financial Policies

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE ADOPTION OF FINANCIAL POLICIES; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick explained that the adoption of the final policies was required to receive advance funds. He reviewed the four policies to be adopted. Legislative Liaison Jason Freeman described the new F-ROC (Florida Recovery Obligation Calculation) program and how the score translated to money up front that the town could receive upon obligation.

Council Member King moved to approve the resolution, seconded by Council Member Woodson.
The motion carried unanimously.

C. Resolution 24-128; Short Term Rentals

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, WAIVING THE REQUIREMENT FOR PROOF OF USE OF A DWELLING UNIT AS A SHORT-TERM VACATION RENTAL DURING THE PRIOR YEAR DUE TO THE PENDANCY OF THE LOCAL STATES OF EMERGENCY FOR HURRICANES IAN AND IDALIA; DIRECTING TOWN STAFF TO ADMINISTER ANNUAL RENEWAL APPLICATIONS OF PREVIOUSLY REGISTERED MONTHLY AND WEEKLY SHORT-TERM VACATION RENTALS AND COLLECT SHORT TERM VACATION RENTAL FEES AS IF THE ANNUAL REGISTRATION WAS TIMELY RECEIVED AND THE HOUSES HAD BEEN RENTED DURING THE PRIOR YEAR UNTIL JUNE 1, 2025; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich reviewed the background of the resolution as stated on the blue sheet. The deadline to file a renewal application was discussed since some property owners lost their homes. A consensus was reached that June 1, 2025, was a reasonable deadline.

Council Member King moved to approve the resolution, seconded by Council Member Safford.
The motion carried unanimously.

D. Resolution 24-120; Tentative FY24/25 Millage Rate

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE TENTATIVE OPERATING AD VALOREM MILLAGE RATE OF .#### MILLS FOR FISCAL YEAR 2024- 2025 OF THE TOWN OF FORT MYERS BEACH; ESTABLISHING THE DATE, TIME AND PLACE FOR HEARINGS TO ADOPT THE FINAL OPERATING AD VALOREM MILLAGE RATE AND BUDGET FOR THE FISCAL YEAR 2024-2025; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick stated that one of the key issues was ensuring they had enough cash in the emergency fund reserve. He reviewed the Emergency Fund Reserve Target, Emergency Fund Reserve Funding and Emergency Fund Reserve Optional Funding. He stressed the need to build up the emergency reserve and have enough in the budget to replenish it. Council Member King questioned whether F-ROC would help offset the deficit. Director Onzick explained that it would take too long to get the money after an emergency. He explained that the $7.6 million for revenue replacement enabled them to repay the bridge loan. Council Member Woodson clarified that they would not know whether the loan would be forgiven until next year.

Vice Mayor Atterholt suggested that the town sell part of the town's property to fund the emergency reserves fully and keep the millage rate the same.

Director Onzick agreed that selling the land would be the quickest way to replenish the fund, but his concern was funding the reserve annually.

Vice Mayor Atterholt commented that Lee County Property Appraiser Matt Caldwell was optimistic about next year and he indicated that over the next year, the town would be back where it was before Ian. Vice Mayor Atterholt stated that they would be negligent from a public policy standpoint if they did not sell the property to replenish the emergency fund reserve. Mayor Allers noted that selling the land would fix the immediate shortfall, but it would not fix the recurring problem. Director Onzick added that they needed to put money into the capital fund and funding for ongoing beach renourishment.

Council Member Safford stated that the land was an asset and could generate revenue. He noted that the sources of revenue had decreased substantially. He supported raising the cap and taking a couple of months to discuss where the revenue was coming from and the expenses. Mayor Allers indicated that the legislators did help the town financially, but it was made clear to him that the town had to help itself. He challenged Director Onzick to find areas that could be cut so they did not have to raise the rate.

Council Member Woodson noted property sales were decreasing and she suggested holding on to the property until the market improved. She stated that the rate they set today could always be lowered and indicated they did not raise it last year. She described reduced funding from sources and commented that there was still a lot of work to be done.

Council Member King felt that raising the rate sent a bad message to the residents even if they did lower it later. He suggested that implementing the impact fees would show the state that the town was helping itself. He agreed with selling the old town hall property and did not support an increase. Mayor Allers felt that selling the land was a last resort and the land could be used as collateral for other needs. He thought raising the rate kept options open over the next few months, especially if they had a storm. Council Member Safford did not want to raise the rate either, but he did not support selling the land right now.

Director Onzick recommended raising the millage rate to 1.03.

Mayor Allers moved to set the tentative millage rate at 1.03, as recommended by the finance director, to put forth to the state to be brought back to discuss during the two meetings in September, seconded by Council Member Woodson.

The motion carried 3-2 by roll call vote, with Vice Mayor Atterholt and Council Member King dissenting.

E. Resolution 24-129; Condo Opt-Out Resolution

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, SUSPENDING DURING THE PENDANCY OF THE LOCAL STATES OF EMERGENCY FOR HURRICANES IAN AND IDALIA THE REQUIREMENT FOR CONDOMINIUM ASSOCIATIONS TO NOTIFY THE TOWN MANAGER IF THEY SELF-PERFORM AN ENFORCEMENT PROGRAM FOR VIOLATIONS OF THE CODE OF CONDUCT FOR SHORT TERM RENTALS AS PROVIDED IN SECTION 10-198(7) OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES; WAIVING PAYMENT OF THE REQUIRED FEE FOR EACH BUILDING FOR WHICH AN OPT OUT EXEMPTION WOULD OTHERWISE BE REQUESTED; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich reviewed the background of the resolution as stated on the blue sheet. She added that this did not make any changes to the existing code.

Council Membre King moved to approve the resolution, seconded by Council Member Safford.
The motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt stated that FEMA was reviewing the town's documentation. He noted that they would put an offer on the land next to the new town hall for parking and put in flood controls to help the neighborhood flooding. He indicated that it would cost more than $25 million to build a new town hall over three years. Hurricane preparedness was ongoing and training continued. He mentioned that the town needed an ordinance regarding silt fencing. The R2P2 survey was out, and he encouraged residents to fill it out.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Atterholt received consent to work with the owner of Santini Plaza to update the sign ordinance. Mayor Allers suggested looking at the ordinance as a whole.
No items from other members.

XVII. ADJOURNMENT

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

The meeting was adjourned at 3:30 p.m.

Minutes adopted as presented, August 7, 2024. Motion by Council Member King and seconded by Council Member Woodson. Passed 5-0.

Amy Baker

Amy Baker, Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Albers Daniel Lee	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Fort Myers Beach Town Council
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY COUNTY	NAME OF POLITICAL SUBDIVISION: Town Council
DATE ON WHICH VOTE OCCURRED	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also MUST ABSTAIN from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Daniel L Allers, hereby disclose that on June 17, 20 24:

(a) A measure came or will come before my agency which (check one or more)

X inured to my special private gain or loss;

X inured to the special gain or loss of my business associate, Tim Ryan;

___ inured to the special gain or loss of my relative, ___;

___ inured to the special gain or loss of ___, by whom I am retained; or

___ inured to the special gain or loss of ___, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

My business partner and I have a business contract with the applicant for our golf cart services.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

6/17/24
Date Filed

[signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
Allers Daniel Lee	Fort Myers Beach Town Council
MAILING ADDRESS 5485 Avenida Pescadora	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY: Fort Myers Beach COUNTY: Lee	NAME OF POLITICAL SUBDIVISION: Town Council
DATE ON WHICH VOTE OCCURRED 6/17/24	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

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For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

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WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

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APPOINTED OFFICERS (continued)

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