

NOTE: A request form is available from the Deputy Town Clerk; please fill it in and return it prior to the start of the meeting if you would like to speak during public comment. When you speak, you must come to the podium in the front and clearly state your name and address for the record. Please mute or turn off your cell phone or electronic devices at the start of the meeting. Thank you.

**TOWN OF BAY HARBOR ISLANDS
MORRIS N. BROAD COMMUNITY CENTER
1175 95TH STREET
BAY HARBOR ISLANDS, FL 33154**

**REGULAR COUNCIL MEETING
AGENDA**

March 20, 2024
7:00 PM

STATEMENT OF DECORUM

All comments must be addressed to the Council as a body and not to individuals. Any person making a racial or slanderous remark or who becomes boisterous while addressing the Town Council, staff, etc. shall be barred from the audience by the presiding officer. No profanity, shouting, heckling, verbal outbursts, or disruptive behavior in support of or opposition to a speaker or his/her remarks is permitted. Please mute or turn off your cell phone or other electronic devices at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chambers shall do so quietly.

SPECIAL NOTICE

A Regular Meeting of the Town Council of the Town of Bay Harbor Islands will take place in-person and virtually through the Zoom platform, on Wednesday, March 20, 2024, at 7:00 p.m.

“In an effort to provide greater public access and comment on pending matters, the Town of Bay Harbor Islands is providing a Zoom link to enable members of the public to comment on pending items on the Town Council agenda. Zoom access is provided under the same terms and conditions as in-person access, including length of time and decorum. Anyone desiring to be heard may utilize the Zoom link. However, members of the public must understand that the provision of Zoom access for comments is a courtesy, not a vested right, and that access is provided subject to the availability and functionality of the Town’s equipment. There is no guarantee that internet service will be reliable or that the Town’s equipment will function as intended. In the event that the Zoom access is unavailable or interrupted for any reason, the Town Council meeting will still proceed forward, and will not be stopped or rescheduled in any regard. Those wishing to be absolutely certain that their comments are heard by the Town Council should present themselves in person at the Council meeting and seek recognition, or alternatively, should submit their comments in advance of the meeting in writing to the Town Clerk, and ask that they be read into the record, subject to the above terms and conditions, such as length and decorum. The validity of any actions taken by the Town Council will in no way be affected by the use or functionality of Zoom access for comments.”

Zoom Meeting Link:

<https://us06web.zoom.us/j/88151791071>

Meeting ID: 881 5179 1071

To request to speak during Public Comment, please utilize the “raise your hand” Zoom feature on your electronic device. You will be recognized at the direction of the Zoom Meeting Host.

In addition, any member of the public who does not wish, or is unable to participate through the Zoom video conferencing platform, but would still like to participate can do so by listening to the meeting as it happens by dialing the Toll-free numbers below:

US Toll Free Numbers: 877 853 5247 or 888 788 0099

For higher quality, dial a number based on your current location):

US: 1 305 224 1968 or 1 646 558 8656 or 1 301 715 8592

Meeting ID: 881 5179 1071
Participant ID: Press the # key.

To request to speak: Dial *9 on your telephone device to activate the “Raise your Hand” feature on the Zoom platform.

Members of the Public can also submit their request to speak and/or comments via email to the Office of the Town Clerk at yhamilton@bayharborislands-fl.gov prior to 4:00 p.m. on the day of the meeting.

CALL TO ORDER: at approximately 7:00p.m.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

SPECIAL PRESENTATION:

1. Phyllis Shamis, Life Alliance Ambassador - Life Alliance Organ Recovery Agency

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER’S REPORT:

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

PUBLIC COMMENT

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

COMMITTEE REPORTS:

CONSENT AGENDA: Set for approximately 7:55 p.m. (Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)

2. Approval of the following Council Meeting Minutes:
 - A. Regular Council Meeting - February 1, 2023
 - B. Regular Council Meeting - March 8, 2023
 - C. Special Council Meeting - March 14, 2023
 - D. Regular Council Meeting - April 10, 2023
 - E. Special Council Meeting – May 1, 2023
 - F. Regular Council Meeting - May 10, 2023
 - G. Regular Council Meeting - June 14, 2023
 - H. Special Council Meeting - June 28, 2023
 - I. Special Council Meeting - July 27, 2023

- J. Regular Council Meeting - August 8, 2023
- K. Special Council Meeting - August 21, 2023
- L. First Budget Public Hearing - September 13, 2023
- M. Regular Council Meeting - September 13, 2023
- N. Broad Causeway Bridge Replacement Workshop - September 26, 2023
- O. Final Budget Public Hearing - September 27, 2023
- P. Broad Causeway Bridge Replacement Project -September 28, 2023
- Q. Special Council Meeting - September 27, 2023
- R. Regular Council Meeting - October 11, 2023

3. **Consideration and Approval** of a Resolution adopting Title VI Plan update for the Town of Bay Harbor Islands. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (42 U.S.C. Section 2000d). Enclosed are the updated Title VI Plan and the proposed resolution.

**A RESOLUTION OF THE MAYOR AND THE TOWN COUNCIL OF
THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, ADOPTING
TITLE VI PLAN UPDATE FOR THE TOWN OF BAY HARBOR
ISLANDS, FLORIDA, PROVIDING FOR AN EFFECTIVE DATE.**

4. **Consideration and Approval** of a resolution for Change Order No. 3 to a contract between the Town and Engineering Control Systems Corp. awarded October 19, 2022, for the BC-158 Broad Causeway Rehabilitation Construction Project. The Change Order is for \$245,000.00 to cover additional costs due to increased spall repairs and time extension of the contract because of weather days that delayed the project. Enclosed are the Change Order and proposed resolution.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY
HARBOR ISLANDS, FLORIDA, APPROVING CHANGE ORDER
NUMBER 3 IN THE AMOUNT OF \$245,000 TO THE AGREEMENT
WITH ENGINEERING CONTROLS SYSTEMS CORP FOR THE BC-
158 SHEPARD BROAD CAUSEWAY REHABILITATION
CONSTRUCTION PROJECT BRIDGE; PROVIDING FOR
INCORPORATION OF RECITALS; PROVIDING FOR EXPENDITURE
OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.**

5. **Consideration and Approval** of a resolution for Change Order No. 2 to a contract between the Town and BCC/Lakes Engineering awarded on February 10, 2020 for the BC-158 Broad Causeway Rehabilitation Construction project. The Change Order is for \$96,500.00 for construction time extension due to FDOT critical findings, increased repair spall repairs, and weather days resulting in delay of the project. Enclosed are the Change Order, the resolution, and other supporting documents.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF BAY HARBOR ISLANDS, FLORIDA, APPROVING
CHANGE ORDER NUMBER 2 TO THE AGREEMENT WITH
LAKES ENGINEERING FOR CONSTRUCTION
ENGINEERING INSPECTION SERVICES TO THE SHEPARD
BROAD CAUSEWAY BRIDGE REHABILITATION
PROJECT; PROVIDING FOR INCORPORATION OF
RECITALS; PROVIDING FOR EXPENDITURE OF FUNDS;
AND PROVIDING FOR AN EFFECTIVE DATE.**

6. **Consideration and Approval** of a resolution approving the renewal of a Mutual Aid Agreement and Joint Declaration between the Village of Indian Creek and the Town of Bay Harbor Islands for shared law enforcement services. Enclosed are the agreements and proposed resolution.

A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA APPROVING THE MUTUAL AID AGREEMENT AND JOINT DECLARATION BETWEEN THE TOWN OF BAY HARBOR ISLANDS AND THE VILLAGE OF INDIAN CREEK FOR LAW ENFORCEMENT SERVICES; PROVIDING FOR INCORPORATION OF RECITALS; AND SETTING AN EFFECTIVE DATE.

7. **Consideration and Approval** of a resolution renewing the Mutual Aid Agreement and Joint Declaration between the Town of Medley and the Town of Bay Harbor Islands for shared police services. Enclosed are the proposed agreement and resolution.

A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA APPROVING THE MUTUAL AID AGREEMENT AND JOINT DECLARATION BETWEEN THE TOWN OF BAY HARBOR ISLANDS AND THE TOWN OF MEDLEY FOR LAW ENFORCEMENT SERVICES; PROVIDING FOR INCORPORATION OF RECITALS; AND SETTING AN EFFECTIVE DATE.

8. **Consideration and Approval** of a resolution for Budget Amendment No. 2 re-appropriating various funds carried forward from FY 2022-2023 to FY 2023-2024 to fund the cost of the projects that commenced during FY 2022-2023 and were not completed or were deferred until after September 30, 2023. Enclosed are the proposed resolution and supporting documents.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING BUDGET AMENDMENT NO. 2 FOR THE FISCAL YEAR 2023/2024 BUDGET TO PROVIDE FOR CARRYFORWARDS FROM FISCAL YEAR 2023 TO FISCAL YEAR 2024; PROVIDING INCORPORATION OF RECITALS, PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

9. **Consideration and Approval** of a resolution **Ratifying** and **Approving** emergency service authorization to Transcore in accordance with Section 2-1.3 of the Town's Emergency Procurements provisions, for the replacement of firewalls for Sunpass servers at Town Hall for an approximate amount of \$31,950.87. Enclosed is a copy of the price quote.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, RATIFYING THE TOWN MANAGER'S APPROVAL OF AN EMERGENCY PROCURMENT WITH TRANSORE FOR REPLACEMENT OF THE FIREWALLS FOR THE SUNPASS SERVERS; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approve

POLL VOTE

ORDINANCES ON SECOND READING:

10. **Consideration and Approval** of an ordinance on Second Reading amending Section 5 3/4-16 of the Town Code of Ordinances to change the name of the Litigation Committee to Mitigation Committee. Sponsored by Council Member Robert Yaffe.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING SECTION 5 ¾-16 OF THE TOWN CODE RENAMING THE LITIGATION COMMITTEE TO THE “MITIGATION COMMITTEE”; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council's Discretion

POLL VOTE

11. **Consideration and Approval** of an ordinance on Second Reading amending Sections 5-20 and 5-23 of the Town Code regarding the contents of preliminary site development plans. Sponsored by Council Member Teri D'Amico. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO BUILDING AND CONSTRUCTION ACTIVITIES; AMENDING CHAPTER 5 ENTITLED BUILDINGS AND CONSTRUCTION, ARTICLE I, SECTION 5-20 ENTITLED “CONTENTS OF PRELIMINARY PLAN, PENALTY FOR NONCOMPLIANCE”, AND SECTION 5-23 ENTITLED “TIME FOR SUBMITTING OF FINAL WORKING PLANS”; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council's Discretion

POLL VOTE

ORDINANCES ON FIRST READING:

12. **Consideration and Approval** of an ordinance on first reading amending Section 5-18 of the Town Code to include metal roof materials in the list of permitted roofing materials. Sponsored by Council Member Robert Yaffe. Enclosed is a copy of the draft ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO ALLOWABLE ROOFING MATERIALS IN THE TOWN; AMENDING CHAPTER 5 ENTITLED BUILDING AND CONSTRUCTION; AMENDING ARTICLE 1 ENTITLED IN GENERAL; AMENDING SECTION 5-18 ENTITLED REQUIRED MATERIALS IN ROOF AND MANSARD FASCIA CONSTRUCTION / APPROVAL OF DESIGN REVIEW BOARD TO MODIFY THE LIST OF ALLOWABLE ROOF MATERIALS; PROVIDING FOR INCORPORATION OF RECITALS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council's Discretion

POLL VOTE

DEFERRED ITEMS:

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

DISCUSSION ITEMS:

13. **Discussion** and **Possible** action regarding non-renewal of the contract for the art festival. Sponsored by Mayor Elizabeth Tricoche.

ADJOURNMENT: Approximately 10:00 p.m.

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 1.

ITEM: Phyllis Shamis, Life Alliance Ambassador - Life Alliance Organ Recovery Agency

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Life Alliance Organ Recovery Agency
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December 5, 2023

Re: Request for Presentations and/or Tabling's

To whom it may concern,

Life Alliance Organ Recovery Agency (LAORA) at the University of Miami is a non-profit service organization that has the unique role of saving lives through organ donation and transplantation.

We would like to ask if your organization would be interested in having one of our representatives do a presentation and/or have a table with printed materials. The goal is to educate and raise awareness in the community on the importance of organ, eye, and tissue donation.

Mission Statement. "Provide life-saving organs while caring for the families of organ, eye and tissue donors by turning tragedies into miracles."

Statistics

One person could save up to eight lives with organ donation.

One person could enhance up to 250 lives with tissue and cornea donation.

There are over 105,000 individuals nationwide waiting for a lifesaving organ.

Over 17 individuals pass away every day waiting for an organ.

Every 10 minutes someone is added to the National Waiting List.

Best regards,

Melva Sanchez

OPO Community Education Specialist II

Community Department/LAORA

Cell: 862.686.9712

Email: mxs1876@med.miami.edu

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 2.

ITEM: Approval of the following Council Meeting Minutes:

- A. Regular Council Meeting - February 1, 2023
- B. Regular Council Meeting - March 8, 2023
- C. Special Council Meeting - March 14, 2023
- D. Special Council Meeting - May 1, 2023
- E. Regular Council Meeting - April 10, 2023
- F. Regular Council Meeting - May 10, 2023
- G. Regular Council Meeting - June 14, 2023
- H. Special Council Meeting - June 28, 2023
- I. Special Council Meeting - July 27, 2023
- J. Regular Council Meeting - August 8, 2023
- K. Special Council Meeting - August 21, 2023
- L. First Budget Public Hearing - September 13, 2023
- M. Regular Council Meeting - September 13, 2023
- N. Shepard Broad Causeway Bridge Replacement Project - September 26, 2023
- O. Final Budget Public Hearing - September 27, 2023
- P. Shepard Broad Causeway Bridge Replacement Project - September 28, 2023
- Q. Special Council Meeting - September 27, 2023
- R. Regular Council Meeting - October 11, 2023

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Regular Council Meeting - February 1, 2023
2.	Regular Council Meeting - March 8, 2023
3.	Special Council Meeting - March 14, 2023
4.	Regular Council Meeting - April 10, 2023
5.	Special Council Meeting - May 1, 2023
6.	Regular Council Meeting - May 10, 2023
7.	Regular Council Meeting - June 14, 2023
8.	Special Council Meeting - June 28, 2023
9.	Special Council Meeting - July 27, 2023
10.	Regular Council Meeting - August 8, 2023
11.	Special Council Meeting - August 21, 2023
12.	First Budget Public Hearing - September 13, 2023
13.	Regular Council Meeting - September 13, 2023
14.	Broad Causeway Bridge Replacement Project Workshop - September 26, 2023
15.	Final Budget Public Hearing - September 27, 2023
16.	Special Council Meeting - September 27, 2023
17.	Broad Causeway Bridge Replacement Project Workshop - September 28, 2023
18.	Regular Council Meeting - October 11, 2023

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR COUNCIL MEETING**

A Regular Meeting of the Town Council was held on Wednesday, February 1, 2023, at 7:04 p.m. Upon roll call the following members responded:

Mayor Joshua Fuller	
Vice Mayor Elizabeth Tricoche	Council Member Stephanie Bruder
Council Member Teri D'Amico	Council Member Molly Diallo
Council Member Isaac Salver	Council Member Robert Yaffe

SPECIAL PRESENTATION:

- 1. Proclamation honoring and congratulating Ben Ferencz, the last surviving prosecutor of the Nuremberg trials, for receipt of the Congressional Gold Medal.**

Mayor Fuller read a proclamation into the record honoring and congratulating Ben Ferencz for receiving Congress's highest honor – The Congressional Gold Medal and expressing the Town of Bay Harbor Islands' gratitude for his unrelenting commitment to humanity and justice.

- 2. Proclamation - March 2023 - Colorectal Cancer Awareness Month.**

Mayor Fuller read a proclamation into the record proclaiming "March 2023" as Colorectal Cancer Awareness Month.

- 3. Pinning Ceremony - Officer Tomas Figueiroa Rego.**

Rabbi Zalman Lipskar prayed over Officer Rego. Police Chief Raul Diaz administered the "Law Enforcement Oath of Office" to Officer Rego, who received his Police Badge, surrounded by his family, friends, coworkers, and some members of the City of Miami Police Department.

- 4. Transfer of Development Rights (TDR's) Report - Marcum, LLP, Town Auditors –**

Moises Ariza reported that a review of the Town's Transfer of Development Rights (TDR) was conducted, and the resulting report was released on January 4th. The TDR Schedule was provided by the town for its completeness and accuracy. Six (6) required changes were recommended to the schedule in order to make it accurate as of September 30, 2022. As a result of making the recommended changes and updating the schedule, the amounts presented on the schedule as of September 30, 2022 were accurate. Additionally, as of that date, the town was owed \$390,000 for TDR sales which was collected on October 20, 2022. As of February 1, 2023, the TDR Schedule, records, and reports that the Town has in place are complete and accurate. And the Town provided a schedule reflecting the recommended changes.

Council Member Salver questioned a statement in the report that Bank Statements were not available prior to 2013 and asked about the original transaction in the report.

Mr. Ariza responded that there were transactions from November 2012. He explained that they could not vouch the cash receipt for certain transactions, but they were able to vouch the internal accounting records and bank statements that reconciled to the audited financial statements. He noted the banking institution could not vouch for certain transactions prior to 2013 for cash receipts, as they did not keep records prior to that year.

Council Member Salver asked if they were able to verify through a third-party confirmation or by contacting the debtor for proof of payments. Mr. Ariza responded that emails were available. He explained the process, which included reviewing the contract agreements for the TDR sales, and the meeting Minutes which included the sale price which was traced to the town's accounting records and general ledger. Certain transactions could not be followed through the Bank Statements, but everything else was addressed. He added that hundreds of documents were reviewed, but there were no uniform transactions; everyone was reviewed individually. The review started in October and included agreements, meeting minutes, emails and communication with the Town Planner, records regarding Warranty Deeds, Miami-Dade County Property Appraiser search department, bank statements, accounting statements, Council Meeting videos, and reaching out to developers to ensure the documents in hand were correct.

Council Member D'Amico asked if the town should do anything else moving forward, in terms of recording.

Mr. Ariza reiterated that the TDR schedule was complete and accurate, and there were no monies owed. There was a release of an escrow of \$390,000 for the remaining portion of the TDR and interest payment for an extension of the agreement. He stated that all the records were there, but not available in one receptacle. The process that the elected body had approved for the sale of TDRs was not consistent, as it changes. Developers were allowed to negotiate and dialogue with the council. He stated that the Town Manager's Office, the Finance Department, Marlon Martinez, and Town Planner Michael Miller were all helpful, and there was no delay of information. As to recommendations, there should be documentation regarding how future records are documented, because from the records they obtained, nothing was uniform.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Council Member Bruder pulled Item #10 from the Consent Agenda for discussion. She also requested items be placed on the March Council Meeting Agenda to revisit Zoom meetings and to discuss the contract with the gas station in the town.

Council Member Salver pulled Item #9 from the Consent Agenda for discussion.

TOWN MANAGER'S REPORT:

Town Manager Lasday reported on the following:

- Movie Night (the Last Jedi) this Friday with Slide Show of pictures from the town over the last 75 years, followed by a video of Bay Harbor Islands.
- The Art Festival to begin at 11:00 a.m.; MOT to start on Friday at 10:00 a.m. and ends on Sunday night. Notification to the school and distribution of flyers to businesses and to condominium buildings regarding the event.
- A component in the Art Festival for children's activities.
- Special event for residents on Sunday from 11:00 a.m. to 3:00 p.m. serving chicken paella, performance by Nestor Torres, DJ, and dance.
- Concert on Saturday from 6:00 p.m. to 10:00 p.m. A shuttle will be available to transport residents to the event. There will be free extra parking for the weekend in the municipal garage, the Terra Group parking, and the parking lot behind the 1111 Kane Concourse building.
- Public Works Staff and the Town Engineer working with Waypoint on the 92nd Street Park renovations. The item will be heard at the March Council Meeting, and an update will be provided to the Parks & Recreation Committee at the February 16th meeting by Public Works staff and Waypoint. A price was negotiated, and more items were included in the project.
- The council's availability for a School Safety Meeting on February 27th at 6:00 p.m.

Mayor Fuller explained the intent of the closed meeting for the council to be provided with information to maximize the safety of the citizens and of the children at the school.

The manager continued to report:

- February 9, 2023, Bridge Replacement Project meeting at 6:00 p.m. with the beginning of discussion on the look of the new bridge. The meeting will be live streamed, and ATKINS will make a presentation.
- February 15, 2023, at 6:30 p.m. Condominium Association Workshop. Flyers will be distributed.
- A Town Manager's Report will not be provided next week due to her attendance at the FAST Fly-in event in Washington, DC from February 6th through 8th.
- February 18th Movie Night – Luca
- February 26th Concert with Brazilian music
- March 12th – Five K Run
- The Shepard Broad Causeway Bridge repair project to commence no later than the first week of March. Most of the work will be done to the underside of the bridge.
- Completion of smoke testing; all manholes were sealed and there was no infiltration.
- An interview with the Children's Trust tomorrow morning; the town made it to the first round. Congratulated Joel Jacobi for getting the town to this point to obtain the grant.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member D'Amico commented on the out-of-control traffic in Bal Harbour and Surfside. Mayor Fuller explained that both of the lanes on the northside will remain open. Officer Locke explained the traffic pattern for the event.

Council Member Yaffe congratulated Officer Rego, commended Mayor and staff for advertising and planning the event and reported on attendance at the last town concert, which he felt was great for the residents.

Council Member Salver commented on the togetherness among staff and peers at the Employee Appreciation Party.

Council Member Diallo stated she enjoyed going to the banquet, thanked staff for putting such an event together, spoke on her attendance at Miami-Dade County Teacher of the Year Banquet, and congratulated Officer Rego.

Council Member Bruder thanked staff for the work on planning the 75th Anniversary event. She particularly thanked Bridget Morin for her hard work and for the designs associated with the event.

Mayor Fuller expressed condolences on behalf of the town, to the family of Judge Marcia Cooke who passed away; the first Black female federal judge and a Bay Harbor Islands' resident. The mayor also thanked staff for their work on planning the event. He announced the Art Festival for Saturday from 11:00 a.m. to 3:00 p.m., which will be open to all, not just residents; and a concert with Orlando Mendez from "The Voice" on Saturday evening. The event on Sunday from 11:00 a.m. to 3:00 p.m. will be for Bay Harbor Islands' residents only; there will be paella, kosher foods, free beer, and free kosher wine.

PUBLIC COMMENT

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Frances Neuhut, 1060 Kane Concourse, LLC, came forward and complained of a Notice of Violation issued against her new tenant with a threat of a \$75 daily penalty, instead of a Courtesy Notice. She spoke about helping to emphasize term limits and run as a candidate in the April 4th Town Elections; no reason to remove Citizens Bill of Rights or denial of her appeal; her need for the Council to eliminate the Parking Trust, 1070 Kane Concourse; parking crisis in the town's Business District; Council should eliminate TDR Program; council enabling illegal underground parking garages, and the need for positivism.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and questioned the expenditure of \$200,000 for Town Hall's roof, when employees in the building were becoming sick. She stated her intent to contact the Department of Health next week for them to conduct a review of the building. She commended Public Works Director Jason Atkinson for doing a good job and Joel Jacobi for taking care of issues at the school and for bringing the principal up to date. She stated she will request receipts for the 75th Anniversary event. She then thanked the Town Manager for all her work.

COMMITTEE REPORTS:

There were no Committee Reports.

CONSENT AGENDA: Set for approximately 7:55 p.m. (*Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.*)

5. Approval of Minutes:
 - A. Budget Workshop - June 29, 2022
 - B. Special Council Meeting - June 29, 2022
 - C. Special Council Meeting - July 27, 2022
 - D. Regular Council Meeting - August 15, 2022
 - E. First Budget Public Hearing - September 14, 2022
 - F. Regular Council Meeting - September 14, 2022
 - G. Second Budget Public Hearing - September 28, 2022
6. **Consideration and Approval** of a Resolution revising Resolution No. 2268 to amend parking meter rates.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, REVISING RESOLUTION NO. 2268 AMENDING THE TOWN'S PARKING METER RATES; REPEALING OTHER RESOLUTIONS IN CONFLICT, PROVIDING FOR INCORPORATION OF RECITALS AND SETTING AN EFFECTIVE DATE.

7. **Consideration and Approval** of a Memorandum of Understanding (MOU) between Miami-Dade County Association of Chiefs of Police (MDCACP) - First Responder Mental Wellness Initiative and Bay Harbor Islands (Partner Agency) for BHI law enforcement officers participation in the Regional First Responder Peer Support Team Program.
8. **Consideration and Approval** of a Resolution establishing a rate structure for use of the town's Electric Vehicle Charging Station.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, ADOPTING FEES FOR USE OF THE ELECTRIC EV CHARGING STATION; PROVIDING FOR INCORPORATION OF RECITALS AND SETTING AN EFFECTIVE DATE.

ACTION: Council Member Salver made a motion to approve the Consent Agenda. Vice Mayor Tricoche seconded the motion, and it passed unanimously.

9. **Consideration and Approval** of a Resolution amending the Building Permit Fee Schedule set by Resolution No. 2270 to establish a reduced fee for applicants that choose to use a "Private Provider" for Building Plan Review and Inspections, as per Florida Statutes, Section 553.791.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING THE FEE SCHEDULE OUTLINED IN RESOLUTION NO. 2270 TO ESTABLISH A REDUCED FEE FOR APPLICANTS THAT HIRE A "PRIVATE PROVIDER" FOR PLAN REVIEW AND BUILDING INSPECTIONS AS SPECIFIED IN FLORIDA STATUTES, SECTION 553.791; PROVIDING FOR INCORPORATION OF RECITALS AND SETTING AN EFFECTIVE DATE.

Vice Mayor Tricoche moved the item to the floor, and Council Member Bruder seconded the motion.

Council Member Salver asked if the town had ever employed such a program before. Town Manager Lasday responded that the issue came up last week and some other municipalities were doing something similar. The Building Official conducted a survey of other municipalities, and staff was recommending that a large percentage be given because of the size of the town. The town is required by Florida Statutes 553.791 to consider the reduced rate. Town Attorney Geller explained the regulations "Alternative Plans Review and Inspection" which allows the owner of a building or structure to choose to use a Private Provider for building code inspection services with regard to buildings or structures and make payment directly to those Private Providers. However, the services are subject to a written contract with authorization of the owner, who can elect to have this service done for plan review and inspections, subject to various safeguards like the contractor being licensed in the State of Florida and being appropriately regulated.

Discussion ensued regarding the following:

- The Private Provider Statute was adopted in 2021 and 2022; whether the town would assume liability on the decision of the Private Provider; the town assuming liability if it accepted something that was not in keeping with the requirements of the Statute.

- If a resolution could be passed requiring all inspections and plan reviews to be done by in-house inspectors; the choice being with the property owner and not with the municipality; not in favor of lowering the fees; if the owners chose to use these services it should be at their own cost; staff conducting a second review as is normally done and implementing some type of vehicle to bring Private Providers before the Town Council to address the matter again, to protect the public.
- Clarification that the Private Provider would not be receiving a discount; the reduction in fees means the Private Providers would be paid less than the property owners pay the town; a reduced fee will be paid to the town, because it will not be providing the same services; property owners would pay for the plan review and/or inspections privately, so that they do not pay the town the fees that would normally be charged.
- The town conducting a secondary review; the town not authorized by law to redo what was done; having additional inspections would be at the town's expense; reading of the language of the Statute and clarification that there has to be that credit or reduction, and the town cannot charge for services that it was not performing; no authorization or basis in the Statute for the town to redo what the Private Provider did; imposing reasonable Administrative Fee to ensure the proper paperwork was submitted; the council passing an ordinance requiring any party working as a third party inspector to sign and execute a "Release of Liability from the Town", an indemnification clause; with insurance, etc.; provision in the ordinance that in the event the contractor does not sign the release, the town can purchase insurance on their behalf and submit the bill to them in order to protect the residents.
- The Private Provider would be someone licensed with the State, like a licensed engineer or architect, who would have to meet certain guidelines, like financial responsibility; and by virtue of their signature and seal become liable for what they sign.
- The original Statute in place for 15 years; municipalities were not giving the credit in the past; lobbying to include the reduced fee provision in the Statute, which now requires municipalities to give the discount.
- The request was submitted to the Council in order to comply with the Statute. According to the Statute, the Private Provider is liable for the buildings up to five years after construction and One or Five Million Dollars of insurance, depending on the value of the project; the town not having a choice as whether to use a Private Provider, because it was up to the owner or the contractor; information in the Statute pertaining to liability does not prevent the town from passing an ordinance that would increase the liability;

a Professional Engineer, a Registered Architect, or a Licensed Building Official can be a Private Provider, as per the Statute; requirement to provide a “Notice to Building Official” indicating the property owners selection to use a Private Provider; inspectors and plan examiners are not required to be approved by the Board of Rules and Appeals; they are only required to obtain their state license.

- Strict compliance with the Statute could be enforced if the proper paperwork was not provided, if the contractor didn’t hold the appropriate license; if issuance was not done under seal, if documents were not properly signed off, and if the license was not in order, the town would have a right to refuse. The Statute now requires Private Providers to be audited only twice a year, less times than in previous years.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the issue of the Private Provider was a bad policy and that precautionary measures could be taken. She spoke about a house with a six-foot setback instead of ten feet with mold underneath and the Building Department not having the means to measure the setback. She stated that developers totaled the whole lot; did not know if the soil was tested and had arsenic, and took down all the trees, which gave them the right to put their fence close to the other property.

PUBLIC HEARING CLOSED

Council Member Salver requested that safeguards be built into the resolution if it comes back to the council. He felt that the town needs to perform its own plan review, if the plan review is completely offsite and by independent contractor, even if it has to assume the cost, because the town should have the final say on plan reviews.

Vice Mayor Tricoche withdrew the motion.

10. **Consideration and Approval** of a Resolution awarding an emergency contract to Perkins Roofing Corp. in the amount of \$199,188.00 for the replacement of the Town Hall and Annex Building roof.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AWARDED AN EMERGENCY CONTRACT TO PERKINS ROOFING CORP FOR REPLACEMENT OF THE TOWN HALL AND ANNEX BUILDINGS’ ROOFS, PURSUANT TO SECTION 2.1.2 OF THE TOWN CODE; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR EXPENDITURE OF FUNDS; AND SETTING AN EFFECTIVE DATE.

Council Member Salver moved the item to the floor and Council Member Bruder seconded the motion.

Council Member Bruder stated that she did not feel the roof should be repaired, as Town Hall has been mitigated three times for asbestos, previously for mold, and now with this current situation. She mentioned she spoke with contractors, with infectious disease doctors, and walked the entire Town Hall. Plus, staff was getting sick. She felt that installing a roof and air conditioner, waiting six months, and then waiting again to get mold was ridiculous. She stated that the building had not been maintained in 30 years. She suggested knocking down the building, renting space for the offices, and building a new facility within the garage. She stated that she spoke with the town's lobbyist who informed her that grants can be obtained for the Police Department facility, for electrical, and other things, which would mitigate the cost. She stated the employees cannot be left in the building, because there would be mold again even if it came from the roof, as mold cannot be found every single time. They mitigate it, they cut it, but it remains wet behind, unless the mitigation goes all the way to the studs, which would require moving everybody out. She felt that it was at the point where staff needed to be moved out of the building for health and safety issues.

Council Member D'Amico concurred. She felt the Town Hall was not a functional space for what is being done, and having a new building could lead to lots of exciting things that could be done in the space and solve some problems in town. She stated that putting the new roof on the building, which she was not in favor of, would seal the mold, without ensuring the building was clean.

Vice Mayor Tricoche stated she understood staying at Town Hall was not a long-term plan, but a plan had to be made now to get out. She agreed it made sense in the long term to build up the garage and make it custom for everyone. She pointed out the Police Department has some needs that are not able to be accommodated because of working in the shell of a building. However, she wanted information to better understand whether building a new building would be a five or ten-year plan, the options to move staff out of the building including the cost, and how the Police Department and the police officers will be accommodated somewhere else.

Mayor Fuller referred to the additional mold and the water seeping up in the administrative office. He stated that the new floors were recently done and now they are being peeled up, with water underneath, which should have been obvious to the last company that did the renovations and put in the floor. He suggested asking the company why they installed something with an obvious water leak.

Town Manager Lasday responded that the company did not know there was a problem then; the work is under warranty, and the company had been contacted. The bigger issue is what is causing the leak, as it was not a problem back then.

Mayor Fuller stated that he had a problem with spending money on a floor that now has to be ripped back up, as the leak should have been obvious to the company. He stated that the Town Hall structure is not the only one with issues.

He stated that every time a car drives over above the current parking garage in the Police Officers new gym, the wall shakes. The solution is finding out what is structurally wrong, before moving forward. He concurred with previous comments that being in Town Hall was not a long-term solution. He asked if there was any more life outside of the roof. Town Manager Lasday spoke of illness due to the condition of the administrative office and urged the council to have the roof replaced and the air condition fixed, if they were going to keep the room, as she could not physically work there, otherwise.

Council Member Yaffe stated that the issue previously addressed regarding a study for adding a third floor to Town Hall should not be addressed considering the situation that is now being discussed. Town Manager Lasday spoke of the issues at the Police Department and at her office. She stated she had major issues and did not know what the problem was until she noticed there were spores all over the wall in her office. She urged the council to have the roof replaced and the air conditioner fixed, if they were going to keep the building, as something had to be done.

Council Member Bruder stated that replacing the roof will not solve the mold issue, because the mold and wetness are already in the building; they were just topping the roof and there could be mold within four to five months.

Vice Mayor Tricoche asked if it would be feasible to table the item for discussion in two weeks, while staff figured out if there was space in the town to move employees, and the cost and feasibility to do so. The Town Manager stated that it would be a problem because there was no A/C in the building for the police or the administration, which would cause much more of a mold problem. She urged that something be done; either getting the roof repaired and the a/c on immediately or moving all employees to a temporary office space. Council Member Bruder asked if trailers can be used.

Council Member D'Amico stated that there are standards, and with Ms. Kennedy commenting on going to the Health Department regarding the situation, they did not want to put anyone at risk. Plus, if it comes back that there is something, the employees will have to get out of the building. She suggested the Council hear from OSHA before deciding.

Council Member Salver mentioned that the resolution for the air conditioner replacement had already been passed. Town Manager Lasday stated the roof has to be replaced before the a/c is installed, as it goes on top of the roof.

Town Attorney Geller advised that potential cost of lawsuits against the town from people who are getting ill needs to be figured in when calculating cost.

PUBLIC COMMENT

Harry Bruder, 1280 94th Street, came forward and questioned the placement of a new roof or making repairs on two buildings that were not up to code and are over 30 years old. He suggested the town be brought up to the 21st Century and build a new Town Hall, similar to what neighboring cities are doing; a nice place for the employees to work and to get up to code.

Kathleen Kennedy, 9180 West Bay Harbor drive, came forward and suggested Vice Mayor Tricoche take on the project to inquire if Dr. DiPietro's building can be leased for two years to house the Police Department and the other employees, while they move out. She agreed Town Hall should be torn down to build a new building for the employees.

Police Chief Raul Diaz came forward and stated that his department has continuity of operations and could accommodate a short-term move. There would be a problem with infrastructure moving long term for six months or a year, because the secured servers would have to be moved, which is an issue for IT. Short term, they can move their evidence and their property.

Council Member Salver questioned how the discussion had developed to the point of building a new Town Hall, when the item was not included in the Capital Projects Schedule. He stated there was no other choice than to replace the roof on the building to stop the leaking, mitigate, test, and install air purifiers; as well as replace the air conditioning quickly. He referred to upcoming discussion on repair of the Shepard Broad Causeway Bridge replacement project with a high cost, and now talk about knocking downtown Town Hall "on the fly" and moving someplace else. He spoke of the long duration of construction, high cost, cost of materials, not being able to get people to work on the projects, and the new Town Hall potentially becoming a five-year project. He would understand if it were the only project, but the bridge has to be replaced and over \$2 Million will be spent on just ideas and planning. He thought it foolhardy for a town with a \$22 Million annual budget to spend at least \$20 Million on a project, plus having another three-year project. He suggested approval be given for the roof and air conditioning replacement.

Vice Mayor Tricoche expressed favor to leasing the building, and while she was concerned with everyone's health, she also wanted to ensure the space was appropriate to accommodate the needs of the Police Department, with the agreement of the Police Chief. Town Manager Lasday stated the 9,000 square foot space was available, but the biggest challenge was moving IT with the servers, police dispatch, the jail, and the evidence room, which would involve a lot of details to work out. Vice Mayor Tricoche stated that if reference were being made to the move taking place in six months, the roof would have to be replaced. If the move could happen in 45 days with everyone working from home, that would make sense.

Council Member Yaffe stated he shared concerns about the health of the town's employees, and he was looking for assurance that replacing the roof would temporarily solve the problem, so that the employees did not continue to get sick. If that assurance cannot be given, the building needs to be vacated for the health of all the employees. Town Manager Lasday stated that experts will be needed to make that determination. Council Member Yaffe stated that he was not prepared to vote tonight to spend \$200,000 on the roof, unless it would buy some reasonable amount of time to plan for relocation and to rebuild.

Town Manager Lasday stated that environmentalists and restoration people were looking at the building. She suggested the employees be moved to a different space or that modulars be used, if the Council did not agree to the roof replacement, because it was not healthy for employees to be in Town Hall without the new roof and air conditioning.

Mayor Fuller pointed out it was clear no one wanted to spend money on the roof, if it was not going to solve the issue. He suggested having a Special Council Meeting on February 9th, if a report with an answer on the condition of building can be back by then.

Council Member Bruder suggested the employees move out of the building in the meantime, so that people are not in the offices, unless they need to be there. She explained the affected areas, such as the manager's office where a lot of mitigation was done, the department heads' offices in administration, and the Police Department. She then asked about the problem with the flooring.

Town Manager Lasday stated she found out about the flooring problem yesterday. Vice Mayor Tricoche suggested having a meeting a week from today. In the meantime, the Town Manager would find out about leasing the property, then the Council would be ready to come back and make a decision to get everybody out and/or repair the roof. She stated that at the end of the day, staff is number one and it is important to do right by them, and at the same time do the right thing.

Director of Public Works Jason Atkinson came forward and spoke about the duration of the work. He stated that the air conditioning and the roofing contractors were brought together. One of the main considerations was that two of the contractors were very close with similar products, but one was more responsive in bidding and when they could begin. He stated that the air condition work could be completed within five days, and the entire project could take three weeks. He advised, he did not know how the price would be affected, if the roofing project was pushed back as the price was already set. Council Member Salver asked Mr. Atkinson what his decision would be, if he had the ability to make one. Mr. Atkinson explained that he would repair the leak and install the air conditioning.

Council Member Salver asked when the roof was last repaired, and Mr. Atkinson said 2006. Council Member D'Amico asked if yearly inspections were being done on the roof. Town Manager Lasday stated she was not aware of what happened back then. She noted there were multiple patches on the roof.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and spoke about people being told to move out of a house that had mold; risk to employees' lives; use of TDR monies for a new garage and a new Town Hall, suggestion to get rid of the TDR Program and have developers pay if they wanted something; inefficiency of Town Hall from the start, and the need for parking for the businesses.

Joyce Green, 1350 99th Street, came forward and suggested the employees be removed from Town Hall into mobile offices that can be housed in the parking lot, or they could work from Church by the Sea if space was available, or from home until the building was safe, considering the long-term effect that could result in becoming sick from mold. She further suggested tearing down the dome and building the Town Hall, and the garage with a long-term plan. She pointed out that the Shepard Broad Causeway Bridge repairs were upcoming, which will generate lots of traffic, added to the fact that Bal Harbor will be tearing down their old garage, which would also add to the traffic. She commented that a committee can be formed to address the matter and for the roof to be fixed.

PUBLIC COMMENT CLOSED

ACTION: Council Member Salver made a motion to approve the \$199,188.00 expenditure for replacement of the Town Hall and Annex roofs and delegating the authority to the Town Manager to make the final decision pending lab results and other structural inspections that could convince her fixing the roof and replacing the air conditioning will restore a safe working environment. Vice Mayor Tricoche seconded the motion, and it passed 4-3 on a poll vote with Vice Mayor Tricoche and Council Members D'Amico and Diallo opposing.

Council Member Salver stated for the record he supported a very safe workplace for all employees as they are the town's number one asset.

ORDINANCES ON SECOND READING:

11. **Consideration and Approval** of an ordinance on Second Reading amending Chapter 5, Section 5- 23.01(f) of the Town Code pertaining to meetings of the Design Review Board. Sponsored by Council Member Bruder.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING CHAPTER 5 OF THE TOWN CODE, ENTITLED “DESIGN REVIEW BOARD”, BY REVISING SECTION 5-23.01(f) PERTAINING TO MEETINGS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Bruder was asked if she wanted the item pulled from the agenda, since she was the sponsor. She said no and left the meeting then, at 8:56 p.m.

Vice Mayor Tricoche moved the item to the floor, and Council Member Yaffe seconded the motion.

Town Attorney Geller informed the mayor the ordinance had been amended and a motion should be made to accept the amendments.

Vice Mayor Tricoche made a motion to approve the ordinance as amended and Council Member Yaffe seconded the motion.

Council Member Salver expressed his support for the changes. He suggested additional ones such as giving the Town Council more support and those who present before the Design Review Board more boxes to check before automatic approval, because he thought the process was flawed.

Council Member Yaffe explained the intent to make the calendar for the Design Review Board consistent with that of the Town Council, so that a meeting will not be held if there were no submissions in July or December or if the applications could not be reviewed in time. Town Attorney Geller mentioned the ordinance also address the adjournment time. Mayor Fuller stated he did not think it was that necessary. The ordinance had a little bit of improvement, but there were other things that needed to be addressed.

Council Member D’Amico stated that the ordinance added boundaries but was not that important.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and commented on the way the Design Review Board approves projects. She stated that the Council was responsible and should be held accountable as the true Planning & Zoning Board.

Town Planner Miller commented on the DRB approving underground parking, which should have been approved by the council. He suggested the council clarify the duties of the Design Review Board. He did not think they should approve underground telephone poles. He stated the parking and TDR items go to the council as the Planning & Zoning Board, and it should be specifically told in an ordinance.

PUBLIC COMMENT CLOSED

In response to Mrs. Neuhut's comments, Council Member D'Amico responded that those issues were talked about and will be developed further.

ACTION: Vice Mayor Tricoche made a motion to approve the ordinance as amended. Council Member Yaffe seconded the motion, and it failed 3-3 with Council Members D'Amico, Diallo, and Vice Mayor Tricoche voting in favor. Mayor Fuller and Council Members Salver and Yaffe opposed.

Council Member Yaffe requested the ordinance be brought back on First Reading at the March 8th Regular Council Meeting.

12. **Consideration and Approval** of an ordinance on Second Reading amending Sections 9-29 and 12-27 of the Town Code to modify civil penalties and repealing Resolution No. 2271, which previously addressed certain civil penalties.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 9, SECTIONS 9-29 AND CHAPTER 12, SECTION 12-27 OF THE TOWN CODE MODIFYING CIVIL PENALTIES TO BE ASSESSED FOR VIOLATION OF THE TOWN CODE, REPEALING RESOLUTION NO. 2271; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; AND SETTING AN EFFECTIVE DATE.

Council Member Yaffe moved the item to the floor, and Council Member Salver seconded the motion.

Council Member Yaffe introduced the ordinance and suggested language be included to address low-level non-intrusive activities. He was not in favor of imposing a \$1,000 fine on a landscaping company that had started work early. He wanted to ensure that property owners were not charged major penalties for minor infractions. Council Member Salver suggested giving Code Enforcement discretion, instead of including vague language. Council Member D'Amico pointed out that people can do major interior work. Council Member Yaffe opposed charging \$1,000 for plumbing because somebody showed up early. Council Member D'Amico agreed a fine should be applied, if a permit was involved.

Vice Mayor Tricoche agreed a \$1,000 fine should apply if someone broke the rules, which would be the responsibility of the contractor, not the homeowner. Council Member Yaffe mentioned an example of somebody painting the fascia board at 7:00 a.m. in the morning and receiving a \$1,000 fine, which he did not want to occur. Discussion continued regarding separate fines for landscaping and maintenance, the need for improved code enforcement, rebars being delivered to a site at 6:30 p.m., concerns about the impact of \$1,000 fine to property owners, and the goal of the ordinance to increase fees for major construction, not minor.

ACTION: Council Member Yaffe made a motion to adopt the ordinance on second reading. Council Member Salver seconded the motion, and it passed unanimously on a poll vote.

Council Member Salver suggested providing the Special Master with a list of what is considered minor infractions to mitigate the fines, if it became a problem with issuing large fines for small violations. Council Member Yaffe stated a list cannot be provided for everything, if the fine was a \$1,000, then so be it; it can be mitigated to \$500.

ORDINANCES ON FIRST READING: There were no ordinances for First Reading.

DEFERRED ITEMS: There were no deferred items.

TOWN MANAGER ITEMS: There were no deferred items.

13. **Request for approval by Bay Harbor Investment, Inc. for operation of a Sales Center to be located at 1170 Kane Concourse, in connection with the development of a 7-story, 27-unit multifamily residential building at 9740 and 9760 West Bay Harbor Drive; as approved by the Design Review Board on October 18, 2022.**

Council Member Salver moved the item to the floor and Council Member Diallo seconded the motion.

Discussion ensued regarding the Council's directive that requests for Sales Centers not be presented to them.

Cecilia Torres-Toledo, Akerman LLP, Bay Harbor Investment, Inc., came forward and informed the council she was seeking approval of the Sales Center. She explained that Town Planner Michael Miller had made a determination that the Sales Center was not doing retail, therefore the use would have to be requested from the council. She explained that the center will be in an existing commercial building; the project will be non-intrusive use; it will have six (6) people at a time; they will be selling a luxury project; parking was available at the property and on the lot behind; and they intended to operate for 24 months, 36 if they didn't sell before then.

Council Member D'Amico asked if the Council was allowed to limit the use as the idea was to fill the space with something. Mayor Fuller explained the office will close at 5:00 p.m. for two to three years, and the intent is to revitalize Kane Concourse with foot traffic.

Vice Mayor Tricoche stated she did not like the idea of having Sales Centers on Kane Concourse but would rather them there, than having people in the neighborhood. She suggested they be allowed on the second floor. Mayor Fuller concurred to allowing the Sales Centers on the second floor or above in the buildings on Kane Concourse, as the town was trying to create a retail environment for that area.

Vice Mayor Tricoche suggested Sales Centers be required in the commercial office and not at the construction site. Town Manager Lasday stated that the ordinance will be revised for discussion at the next Council Meeting. Council Member Salver thought the council needed to draw the line when it comes to directing private property owners regarding the type of tenants they can take in, as the code provides for a list of uses that are not permitted in the town; and the Sales Centers is not one of them. He stated there is a ton of activities at the café next door, and another Sales Center should not be prevented, since there are others and real estate brokerage firms in storefronts. He believed in Bay Harbor Islands and why they serve the citizens; and that the success of the Kane Concourse will eventually happen organically; with events like the Art Festival and the concerts in the town, plus the demand will grow for commercial properties.

Mayor Fuller stated that with the approval of the last Sales Center, there was an agreement with the landowner that they were waiving any claim to grandfathering. Town Attorney Geller advised that if the Sales Center was approved, a time limit should be set, and the applicant would have to come back and request any renewal and solve the grandfather problem. He added that approval of these items is based on other conditions that may be imposed by the Town Council. The mayor stated that the agreement by the landowner was needed, and the lease had to be amended accordingly. Town Attorney Geller stated that approval can be conditioned subject to extensions being granted by the Town Council. The mayor added subject to the applicant obtaining a lease amendment worth two years, waiving the grandfathering, and coming back at the end of two years, if necessary.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and commented on Section 23-7 of the Town Code regarding the type of uses; getting commercial into Kane Concourse; no need for real estate businesses; ground floor being accessible and storefront having steps; there should have been a restaurant on ground floor instead, and council not following code.

PUBLIC COMMENT CLOSED

ACTION: Council Member Salver made a motion to approve the request for the Sales Center subject to an amendment to the lease, including a waiver by the landowner subject to a two-year term period in the lease, waiving the grandfathering, and the applicant will have to come back to the Council at the end of two years, if necessary. Council Member Diallo seconded the motion, and it passed unanimously on a poll vote.

- 14. Consideration and Approval** of a Resolution approving a Parking Trust Payment Agreement with Kane BH Property 1, LLC for payment of a fee to the Town's Parking Trust for a portion of the required parking spaces in lieu of the Developer providing all of the project's required on-site parking spaces, pursuant to Section 23-29.1 of the Town Code; for the proposed commercial development to be located at 9555 Bay Harbor Terrace.

Matt Amster, Bercow Radell Fernandez Larkin & Tapanes, 200 South Biscayne Boulevard, came forward representing Kane BH 1, LLC, the applicant, and owner. Representative Jeffrey Davis and the traffic consultant were also present. He reported the project was approved in 2019. It included an automatic parking system by Parkmatic. Also present were experts Carlos Balondro and Max Yoseff and Maritza Haro, partners at the firm. The project is an old one that was delayed by the pandemic and had ownership issues. The two-story building with retail and offices on Kane Concourse will remain and will be renovated. The eight parking spaces behind the alley will remain. The main change will be to the surface parking lot to the south, which would have a seven-story building with 2,500 square feet of ground level retail with a Parkmatic automatic parking system and approximately 19,000 square feet of offices above. The intent is to have the parking system and the Parking Trust, which are conditions in the original approval. The traffic consultant thoroughly vetted the parking.

Council Member D'Amico inquired about the parking spaces. Mr. Amster explained that 64 parking spaces were being provided; eight of them exist at street level parking in the alley between the two buildings; Parkmatic system will provide 56 spaces; and the traffic consultant, whose statement was part of the original approval as well as the application package, thoroughly vetted the spaces as sufficient. A minimum of 40 percent of space was needed in the project for the Parking Trust and the project has 57%.

Ari Sklar, Sklar Architecture, 2310 Hollywood Boulevard, Hollywood, Florida, came forward and informed the Council they expect to receive the Building Permits within a month or two. The existing building will also be renovated. He provided a description of the design of a seven-story building with retail on the ground floor and all storefronts along Bay Harbor Terrace and 95th Street, in an effort to activate the pedestrian realm. He described the lobby area and retail space on the renderings, a sculpture to be located in a corner, all the parking entrance and exit to be from the alley, valet will be available to assist the people, the automated system that can be accessed from an app, existing building that will be renovated; the new building being discussed, all glass open to the street with balconies, the building wraps the corner, sculptures that will be part of the project, and screening to help ventilate the garage section.

There was discussion about the location of the parked car shown in the renderings. Council Member D'Amico commented that it was not all retail on the ground floor. Mr. Sklar stated that it was, except for the showcase windows for the retailers, which hide the parking on Bay Harbor Terrace. The parking design concept came about in working with staff, Town Planner Michael Miller, and with the town throughout the years. There are a series of wires in the area that will be cleaned up through working with FPL. Landscaping will be on the upper floor on the east side and there will be an outdoor terrace.

Matt Amster stated there will be a safe automatic parking system under valet watchful eye, who will be trained by Parkmatic, and the system can be manually operated if there was a power outage. There will be sufficient parking spaces, many more than was required for the Parking Trust. The whole package was to have it with the Parking Trust as part of the approval. He stated that he knew the fee had been increased, but it had been \$20,000 at the time and for most of the lifetime of the project and thought that amount was a fair and appropriate fee to be applied, as it was not a new project. He expressed his belief that there was a recognition of appropriate grandfathering understanding that projects that have been fully in the system, including this one with its 2019 approval and almost finished with its Building Permit, should be recognized. He requested the applicable fee at time of approval be accepted.

Council Member D'Amico stated that of the two retail spaces on the ground floor, one is the lobby. Mr. Sklar clarified there is a retail space and a lobby on the side of it. She asked where the stairs lead to. He responded the retail space is small and it has a mezzanine above. Discussion ensued regarding access to the project. Mr. Sklar explained that the public can go into the parking area and park their cars or leave them with the valet. There will be parking on the street, in the garage, and parking unloading towards the alley.

Vice Mayor Tricoche informed Mr. Amster that she will not support a reduced price. Mr. Amster stated that this is another instance of the rules being changed on a project that has been worked on for many years with approval in 2019.

Mayor Fuller explained that the pricing was based on replacement at that point in time to build another parking garage, which was \$20,000 a space. Construction costs increased and it now costs \$30,000 to \$ 35,000. Vice Mayor Tricoche stated that normally she was not okay with having so many spaces off site, but it was appropriate for this particular project and its location. Mr. Amster stated that it was a real hardship for the project to be built when the fee was almost doubled at the last minute. He stated that all the parking is not there.

Jeffrey Davis, 9 Bank Road, New York, came forward and stated that they came into the project after it did not get off the ground. They purchased it in February 2022 and immediately prepared the plans. The project was purchased with all approvals in place with a \$20,000 per space resolution for parking, with the understanding that it was for the parking contribution. There was a deal to do the project with the approvals in place.

The Building Permit was submitted in September and the Parking Trust fees changed in September 2022. It was raised the same month they applied for a Building Permit. Council Member Salver asked if the Council was bound by approvals that were made in the past, and Town Attorney Geller said no; it was at the Council's discretion. Council Member Salver asked what would happen if there were no more parking spaces. Mr. David requested that the Council adhere to the Resolution in place for the project. Mayor Fuller asked about the order of the permit and the Resolution. It was noted that the Resolution was signed on June 29th and the application was later submitted in September. Council Member Salver asked if there were any design changes from the 2019 plans. Mr. Davis stated it will be a rental building. The issue was the timing and the pricing. Council Member D'Amico stated that not providing 48 spaces would be a burden on the town.

Town Attorney Geller advised that two (2) separate votes will be required if there was a motion to approve, with the request for the Parking Trust governed by the last Resolution at \$35,000 per space due at Building Permit, with terms and conditions.

Council Member Salver made a motion to approve the request. Vice Mayor Tricoche seconded the motion supporting the \$35,000 per space fee.

Council member Salver amended the motion to honor the original approval rate of \$20,000 per space and to obligate the applicant to pay an additional \$500,000 to the Parking Trust. The motion failed for lack of a second.

Vice Mayor Tricoche seconded the original motion to charge a \$35,000 per space fee for the 48 parking spaces for the Parking Trust.

PUBLIC COMMENT

Frances Neuht, 1060 Kane Concourse, came forward and stated that the applicant was new and according to Miami-Dade County, he knew the property was listed with Unity of Title to 1080-1090 Kane Concourse. She questioned the 2019 project's approval and commented that the Town Planner's Report should have been included before parking was approved. She stated that there was no parking for delivery. She made the following comments: how much of mixed use was really on the ground floor; it is a dangerous corner; there is no way cars can park there; there is only a few parking spaces; the spaces are crowded; there is a critical situation with the Parking Trust that the town has to get rid of; and the town never got parking or garage with the Parking Trust money.

Council Member Yaffe stated for the record that the then Planning & Zoning Board adopted a Resolution on September 24, 2019, approving the project, which is part of the public record.

Mr. Amster came forward and explained that originally there was a Payment Plan that didn't require payment all at once. They came with the intention that they would be paying \$20,000 per space at the time of Building Permit, which was a month or two away. He requested the motion for payment of \$35,000 per space be amended to include payment of \$20,000 per space at Building Permit, and they be given the opportunity to pay the rest overtime, in an effort to ensure the project did not get "killed".

Discussion continued regarding the original approval allowed for payment over time, those options being removed at the time the new Resolution was adopted, the Council having a responsibility to the people of the town to support their needs, payment of \$20,000 per space up front and balance at time of Certificate of Occupancy, no hardship, extenuating circumstances, payment of \$20,000 and balance at one-year anniversary, \$500,000 on anniversary for each year afterward, and payment of \$50,000 per space if the Town was going to finance their development. Town Attorney Geller advised that the council was not prohibited from charging a higher fee.

Council Member Salver amended the motion to approve the request with a \$960,000 downpayment, \$240,000 due within 12 months, \$240,000 within 24 months, and \$240,000 within 36 months. Council Member Yaffe seconded the amended motion. The motion failed by 3-3 with Mayor Fuller and Council Members Isaac and Yaffe voting in favor. Vice mayor Tricoche and Council Members D'Amico and Diallo opposed.

ACTION: Council Member Salver made a motion to approve the request with payment of \$35,000 per space for 48 spaces to the Parking Trust, payable upfront. Vice Mayor Tricoche seconded the motion, and it passed 6-1 on a poll vote with Council Member Yaffe opposing.

15. **Request for approval by 1177 Bay Harbor Islands, LLC for operation of a temporary Sales Gallery to be located at 1160 Kane Concourse, in connection with a mixed-use development (commercial, office, and residential) to be located on the northeast corner of Kane Concourse and West Bay Harbor Drive.**

Graham Penn, Bercow Radell Fernandez Larkin & Tapanes, 200 South Biscayne Boulevard, representing 1177 Kane Concourse, a subsidiary of the Tera Group and Steven Rosen were present. He described the request for a Sales Gallery to be located in an existing tenant space at 1160 Kane Concourse to serve the new 1177 Kane Concourse project. He stated they have their Building Permit and expect to move forward soon. The building will include retail space on the ground floor, offices, and residential components.

Council Member Yaffe asked if the project will be coming back before the Design Review Board due to some changes. Chief Building Official Mike Mesa explained that the project has a Building Permit, but the applicant was applying to revise their site plan, which may end up in front of the council again.

Vice Mayor Tricoche asked if they were selling the units as approved or as they hoped they would be. Mr. Penn said yes. He explained the changes, which he thought were minor with the decrease in density. The retail, commercial, and office components will not change. The difference in residential is that the unit count will be reduced, which will necessitate some façade revisions, etc., and will require the applicant to go back to the Design Review Board. Council Member Salver asked if it would be a rental project. Mr. Penn said they will be condominiums.

Mr. Penn explained the location at the western space in the 1160 Kane Concourse building, for Council Member D'Amico. Mr. Penn stated the building has its own parking lot, so they will not be intruding. They will be utilizing the space with the parking in the back and the town garage in the back; there is no impact to the residential neighborhood, and there will be no parking on temporary lots. He advised that he has no objections to the conditions imposed upon the other applications, the two-year time frame and the necessity of the lease amendment as a condition. He asked for the council's approval of the request.

Council Member Salver asked if the space was empty. It was noted the space had already been built out. Mr. Penn stated that a permit was obtained.

Mayor Fuller stated that he did not have a problem approving the Sales Center for two (2) years but was concerned that they will more than likely come back for changes, if there were further delays. He stressed that he was not in favor of the applicant coming back to the Council requesting more time, especially this one that was not elevated; it was on Kane Concourse on a spot that the Council had said no to, but he would go along with the two years for purpose of consistency. He advised this will be the last center he votes for on the ground floor of Kane Concourse.

Council Member D'Amico expressed concern about buildings with doors being shown in the middle, where the plans show them on the side, which result when elevations are not provided. She asked what kind of signage would be installed.

PUBLIC COMMENT

Frances Neuht, 1060 Kane Concourse, came forward and stated there is a parking crisis with no parking on Kane Concourse. She believed the request required a variance according to Section 23-5.7 of the Town Code. She commented on the requirement for the less than 50% bays and stated that the calculation was not done on how many there were. She stated the office building was not promoting the commercial district; a variance was needed for this project and the other Sales Office, and the council was not following the code.

Mayor Fuller requested an ordinance at the next meeting prohibiting Sales Centers on the ground floor in retail areas and in residential areas. They could be permitted upstairs in the commercial areas.

ACTION: Council Member Salver made a motion to approve the request for the Sales Center for a two-year term, with the time starting at the approval of the request, waiver of grandfathering, amendment to the lease, and that any extension will require approval by the Council. Council Member Diallo seconded the motion, and it passed 5-1 on a poll vote with Council Member D’Amico opposing. Council Member Bruder was absent.

DISCUSSION ITEMS: There were no discussion items.

ADJOURNMENT:

There being no further business to address the meeting was adjourned at 10:38 p.m.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS MINUTES OF A REGULAR COUNCIL MEETING

A Regular Meeting of the Town Council was held on Wednesday, March 8, 2023, at 7:05 p.m.
Upon roll call the following members responded:

Mayor Joshua D. Fuller
Council Member Stephanie Bruder Council Member Teri D'Amico
Council Member Molly Diallo Council Member Isaac Salver
Council Member Robert Yaffe

Vice Mayor Elizabeth Trichoche was absent.

SPECIAL PRESENTATION:

1. Proclamation - Judge Marcia G. Cooke

Mayor Fuller announced the passing of Judge Marcia G. Cooke, the first black female Federal Judge and a resident of Bay Harbor Islands. He read a proclamation into the record recognizing her remarkable achievements and gratefully acknowledging her many contributions to her profession and to the community. The Council then observed a moment of silence.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Council Member Bruder requested the Town Planner write a requirement for an engineer to inspect the surrounding buildings when a new building is being constructed, halfway through, and at the end before a Certificate of Occupancy is obtained to ensure the integrity of those buildings; ensuring they are intact and have not been damaged from the building that is being constructed next to them. As far as bracing is concerned, Council Member D'Amico suggested that information should be included to make sure the proper methods are used to secure the structure.

TOWN MANAGER'S REPORT:

Town Manager Lasday reported on the following:

- Closure of the 98th Street Park from March 9th through March 12th at noon to replace a splash pad
- Town Elections are to be held on April 4th at the Morris N. Broad Community Center.
- The Town's submittal of a RAISE grant application for \$15 Million for design of new bridge
- She and the mayor travel to Washington D.C. to formally request support from Senators Rubio and Scott and Congressmen Wilson's and Wasserman's office
- Annual Egg Hunt on April 2, 2023 at 11 a.m.
- 5K Run on March 12, 2023 at 8 a.m.
- Nikki Kid Band on March 12, 2023 at 7:00 p.m.
- Senior Social to be held on March 16, 2023

- Movie Night on March 18, 2023
- Spring Break Camp to begin on March 20, 2023
- The Town's receipt of the GFOA Certificate of Achievement Award for the budget
- The Town selected to receive \$320,000 for the Children's Trust Youth Development Grant

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports. Council Member D'Amico reported she will be attending the Dade Days in Tallahassee for the first time. Council Member D'Amico mentioned her intention to attend the Miami-Dade Days in Tallahassee.

Council Member Yaffe reported on his attendance at the Fast Fly-In in Washington D.C. and on the Broad Causeway Bridge Kick-Off meeting.

Council Member Salver reported on his attendance at the Children's Trust Strategic Board Retreat on February 23, 2023, the Town receiving a \$320,000 grant from the Children's Trust, and his suggestion to the Trust that more emphasis be placed on Early Child Development. He provided Children's Trust statistics and entered their Annual Reports into the record.

Council Member Bruder congratulated Joel Jacobi, Educational Director and Jenice Rosado, Assistant Town Manager for their work on the Children's Trust grant. She expressed disappointment to what occurred at the March 7th Design Review Board Meeting, that the Board did not consider the surrounding properties when looking at the site to be developed. She expressed that she did not have faith in the outside consulting Town Planner and asked the Town Manager to look at his services, because it was her understanding that when he talks to developers, that time is charged to the Town. She stated that she did not have confidence in what was going on.

Council Member Diallo reported it was an honor to go to Boca with Town Manager Lasday and Mayor Fuller to present the proclamation for Ben Ferenz to his son. She stated that Mr. Ferenz is the only surviving prosecutor for the Nuremberg Trials, who is going to be 103 years on March 11th. She mentioned she will also be attending the Miami- Dade Days conference.

Mayor Fuller reported it was a wonderful experience visiting Ben Ferencz and he was glad the Town had honored him. He said he attended the Broad Causeway Bridge Meeting and encouraged residents to attend future meetings. He also attended the Fast Fly-in in Washington, DC with other Council Members. He expressed the importance of the council continuing to lobby representatives in Washington, DC. He stated that he and the Town Manager were also in Washington DC a couple weeks ago trying to get money for the bridge. They are trying to do everything possible as a Council to try and minimize the cost directly to the citizens for the replacement of the Broad Causeway Bridge.

PUBLIC COMMENT:

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and stated she was reviewing some of the expense reports for Council Members and was not happy with what she saw. She thanked Town Manager Lasday for closing the 98th Street Park as kids were smoking drugs there. She informed the Council that all the projects brought forward by the Parks and Recreation Committee and approved by the Council had not moved forward. She expressed concerns for the children of the community and reported that residents on the West Island are not happy.

Council Member Bruder asked Town Manager Lasday to invite the School representative to the next Council meeting.

The Town Manager reported the town is in the process of hiring park rangers.

Sandra Giunchino, 1133 102nd Street, came forward and expressed concern to the new development proposed for the corner between 102nd and 103rd Street on the northeastern part of the islands. She stated that the development is adjoining four lots, and the Palms Condominium will be surrounded by the new development. Their corner units will be enclaved, and the building is a monstrosity. She asked that it be sent back to the Design Review Board. She asked that a compliance solution be found that makes everyone happy. She stated that the traffic situation will become a disaster with the proposed 77 units for that corner. She asked the Council to be attentive of everything in the proposed project as there are structural and aesthetic issues. She was also concerned that their units will have no air and light with the proposed building.

Council Member Bruder informed Ms. Giunchino that the developer is to reach out to the residents of the Palm Condominium, after last night's DRB meeting.

Council Member D'Amico stated that she watched the meeting online and was happy that the residents are going to the meetings and voicing their concerns. She also stated that massing is needed.

Frances Neuhut, 1060 Kane Concourse, came forward and stated that she was running for Bay Harbor Islands Town Council.

Ken Eskin, 1310 99th Street, came forward and suggested the Council consider a water taxi spot in the area of the tot lot on 96th Street, as the traffic is becoming impossible.

Mayor Fuller explained that follow-up meetings were held regarding that park. He and the Town Manager had a Zoom meeting with the architect on the design and everything else, and he was given a few more things that the Town wants. The new plans will go back to the Parks & Recreation Committee when they are provided. The park will be for Bay Harbor Islands' residents only. He informed Mr. Askin that while he was not against looking at it, that area was not the location for a water taxi because it is up against private residences.

Dave Sanchez, 1089 94 Street, came forward and suggested the Council not approve large developments over the height limit. He suggested the Council attempt to get a closer high school for the island.

Mayor Fuller responded that the entire Council is trying to work on the issues with the school, and the height limit of 75-feet will not increase.

Council Member Salver added for the record that the 75-foot height was not being followed. Originally, the height was measured from the crown of the road, but case law requires the buildings to be measured from base flood elevations, which could lead up to a building being as tall as 105 feet.

Mayor Fuller explained his efforts several years ago to get a smaller high school built in the Town and his continuing efforts to see what can be done. He mentioned having multiple conversations with neighboring mayors, and there was agreement amongst them that there needs to be a high school nearby. He stated that he is still trying to see if there is something that is possible.

Giselle Mueller, 1120 102nd Street, came forward and expressed concern to the proposed 77-unit development by CHBH 103rd Street. She stated that the project will negatively affect her building and a few of the older buildings on 102nd Street. She believed the developer should hire a structural engineer, at their own cost, to document the neighboring structures before, during, and after construction and prior to the Town giving a Certificate of Completion or a Certificate of Occupancy. She recommended the Town hire and select the structural engineer and the fees be paid directly by the developer, so that the structural engineer is not bias to the developer. She felt the developer should be responsible for any repairs or damage that the structural engineer finds. She asked the Council to also look at the parking situation.

Council Member Bruder advised Ms. Mueller that she requested an item be added to a future agenda to address her concerns.

COMMITTEE REPORTS:

There were no Committee Reports.

CONSENT AGENDA: Set for approximately 7:55 p.m. *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.*

2. **Consideration and Approval** of a Resolution adopting Title VI Plan update for the Town of Bay Harbor Islands. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (42 U.S.C. Section 2000d).

**A RESOLUTION OF THE MAYOR AND THE TOWN
COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS,
FLORIDA, ADOPTING TITLE VI PLAN UPDATE FOR THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA, PROVIDING
FOR AN EFFECTIVE DATE.**

3. Approval of Council Meeting Minutes:
 - A. September 28, 2022 Special Council Meeting
 - B. October 19, 2022 Regular Council Meeting
 - C. November 3, 2022 Special Council Meeting
 - D. November 28, 2022 Regular Council Meeting

4. **Consideration** and **Approval** to piggyback off the Seminole County Sheriff's Office/Contract with HG2 Emergency Lighting to outfit (5) new police vehicles with emergency lights and equipment in the amount of \$52,245.25, pursuant to Section 2-1(6) of the Town Code.
5. **Consideration** and **Approval** of a request to go out to bid for CRS (Community Rating System) re- certification review services.

ACTION: Council Member Bruder made a motion to approve the Consent Agenda. Council Member Yaffe seconded the motion and it passed unanimously.

PUBLIC HEARING

6. ~~**Consideration** of a request to the Town Council of the Town of Bay Harbor Islands, Florida, appealing the actions of the Design Review Board regarding the Site Development Application for a proposed single family residence for 1270 99th Street, Bay Harbor Islands, Florida; pursuant to Section 5-13.1(b) of the Town Code. Enclosed is the Town Planner's Staff Report and other supporting documents.~~

The appeal was withdrawn as the project was approved at the March 7th Design Review Board meeting.

13. **Consideration** of a request by Kane BH Property 1, LLC for modification of the Parking Trust Agreement approved at the February 1, 2023 Town Council Meeting for application of a fee of \$25,000 per space, instead of the \$35,000 per space approved to be paid into the Parking Trust for development of the property at 9555 Bay Harbor Terrace. Sponsored by Council Member Robert Yaffe.

Council Member Bruder disclosed that she does business with the applicant. She recused herself from participating in the matter and left the Council Chambers.

Council Member Yaffe stated that he voted against the proposal at the last Council Meeting because he recalled the meeting in June of 2022, when he actually made the motion to approve the resolution to increase the Parking Trust fee space to \$35,000. He also recalled that during that meeting in June 2022, there was some discussion as to what projects were pending at that time. He added that when the Council is amending fees and ordinances or resolutions to change fees, they tend to make it prospective. They look at what projects have been approved, prior to the institution or application of the new fee. He continued to explain that this particular project was approved in 2019, and for various reasons (pandemic and otherwise), they didn't get around to submitting permits. He stated that he thought having this resolution apply to this project that was approved several years before the fee increase was not fair under the circumstances. He stated that there was some discussion amongst the council members at that meeting last month regarding a compromise, which didn't get anywhere.

He thought it merited coming back for reconsideration. It was the only project that was pending at the time the resolution increasing the Parking Trust Fee from \$20,000 to \$35,000 was adopted in June 2022 and wanted to bring back the item to see if under the circumstances and because of his recollection of what transpired in June, whether any of the Council Members had any other thoughts on the matter. He felt the project was beneficial and good for the town and would bring a lot of property tax revenue into the town in the future.

Council Member D'Amico stated that it was a new applicant, and she didn't understand how something from 2019 was being used. The applicant adopted a design and things have changed. She felt they were voting for something that was very irresponsible. She said there is no place for parking. She questioned where all the money being taken for the Parking Trust was going. She added that the application was a new one and everything went up. She said everybody is paying higher prices, therefore, she did not think it was valid as far as special treatment and did not understand, as the applicant just came before the Council last month for approval from the Parking Trust.

Council Member Yaffe expressed disagreement to Council Member D'Amico's interpretation of the situation, and pointed out that the project was approved in 2019. It did change hands, it has a new owner, and nothing about the project was revised other than the ownership. He referred to the LaBaia project on tonight's agenda where the project changed hands and the building was modified. And they are coming before the Council tonight as they have reduced the density of the buildings and are looking to change the TDR Agreement. He explained that because there was no change in the project that was approved in 2019, which never came back before the Council or the Design Review Board, he wanted to bring it back to see if any other member of the Council shared his thoughts that it might be the right thing to do.

Council Member Salver believed there was space between the \$35,000 fee and the \$20,000 fee given the facts and circumstances surrounding the project. He recalled that some features of the project appeared differently than on this proposal. He opined that the last Council's decision on the matter was a bit harsh and thought this case was a good one to stray from the ordinances as of now and do something to address the fact that there was some type of agreement that was reached a few years ago. He believed it was appropriate for the Council to reach a decision, not at the \$35,000 mark but something based on the \$20,000 mark, plus a factor in the range of \$25,000 for inflation.

Council Member Yaffe stated that in the past, the concept of the Parking Trust was applied, meaning if there weren't enough parking spaces on the property, per parking space fee could be used to make up for the fact that all the parking spaces could not fit on the project, which was applied to residential properties-the LaBaia properties for example. After that application, it was determined the Parking Trust would no longer apply to residential properties or projects, only to commercial projects.

He stated he, too, was concerned about the parking in the Town. There is a parking issue that needs to be resolved, and in the future the Council needs to look at the existence of the Parking Trust and the ability of projects to buy into it. He stated that he supports a future Council Meeting agenda item to address how the Parking Trust operates.

Council Member D'Amico stated that a Comprehensive Plan Meeting is required. The Mayor suggested the Town Clerk poll the Council Members for a date to hold a Comprehensive Plan Workshop.

Mayor Fuller stated he didn't agree with the idea that an agreement should be thrown out the window because of an ownership change. In this case, the project was not completely redone. If there was a significant change, there would be an argument, but not when it's just a matter of ownership.

Council Member D'Amico referred to a matter where a condominium owner is trying to sell and the town has withheld a permit for four years, because the condominium was not settling with the owner. She stated that someone should be able to end their relationship and should not rely on someone else's contract. She said when there is a new owner, there should be a new deal.

Jeff Bercow, 200 South Biscayne Boulevard, Miami, Florida, came forward on behalf of the Applicant Jeffrey Davis, Kane BH Property 1, LLC, and reported the property was approved in 2019 with a requirement to purchase 48 spaces from the Parking Trust at \$20,000 per space for a total of \$960,000, and the project that was approved has not changed. During that time, he and his group relied upon the previous plan, the previous approval, and the \$20,000 per parking space fee. He explained the process of closing on the property, preparation of construction drawings in early 2022, Parking Trust rate change in June 2022, application for building permit in September 2022, and subsequently learning of the rate change. He stated that there were significant discussions at the Council Meeting in June 2022 about grandfathering projects with previously approved site plans with a cut off of September 1st. They had since confirmed with Town Planner Michael Miller's office that the 9555 project is the only remaining one that was approved prior to 2022, that had a site plan, and was required to contract with the Parking Trust. Now, they are faced with the difficult decision of not being able to build the project with the now \$1.7 Million Parking Trust fees, which now has to be paid all at once, under the new rules, rather than overtime. He stated their intention to transform the eyesore of the parking lot to a beautiful project for the town, which will not happen if the fee is \$35,000 per space, as they cannot afford it; which means the town will not receive the fees and taxes associated with the project.

Council Member D'Amico asked if there was a change in the Unity of Title. Mr. Davis responded that they will be all condominiums. She then asked about the parking in the new structure.

Mr. Bercow stated that the project in the new structure will be providing 57% of the required parking, where a minimum of 40% is required for payment into the Parking Trust. He stated that they are providing more than the minimum that is required. He explained that they are short 48 parking spaces, which they are buying from the Parking Trust. Council Member D'Amico stated that the parking will be all valet and expressed concern that it will back up the alley. Mr. Davis stated that it is not the maximum amount of parking, but the issue has already been addressed and decided for payment into the Parking Trust. He explained that he was not asking for a break in the design, which has already been determined. He is asking for a break in the payment. He stated that if the project is not built, the Town will not get the people who will be working in the project, whether in the offices or retail, who will be spending their money downtown and contributing to a vibrant and thriving downtown Bay Harbor Islands. He stated that recognizing the 9555 Project is the only remaining commercial project that is required to contract with the Parking Trust, he was proposing to pay \$960,000, \$20,000 per space at the time of the Building Permit, plus payment of an additional \$200,000 to mitigate the impact of increased construction cost, one year after issuance of the Certificate of Occupancy, to allow the project to mature, to begin to generate rent, and to help defray the cost of the payment.

Council Member D'Amico asked for a response to Mr. Bercow's comment that the Planner's office had confirmed the 9555 project was the only project remaining to contract with the Parking Trust. Mr. Miller explained how many projects participated in the Parking Trust and how many were outstanding: the two La Bia projects, two hotels, and 1177 Kane Concourse that has a provision in their agreement that if there is a parking problem, the town can ask them to contribute to the Parking Trust. Other than the 1177 project, the 9555 Project is the only one that has not finalized its deal with the Council.

Council Member Yaffe stated that the conditions of the 1177 Development Project do not presently include participating in the Parking Trust.

Council Member Salver asked if it was a factual statement that the project had not changed since 2019. Mr. Miller stated it was a factual statement as Building Permits were filed based on those plans. Council Member Salver asked if the original plans contained the carousel parking machines, and Mr. Miller said yes.

Council Member Salver made a motion to accept the proposal brought forth by Mr. Bercow to pay the original contract price of \$960,000 at the time of Building Permit, plus an additional \$200,000 to be paid within one (1) year after the Certificate of Occupancy, to mitigate the effects of inflation. Council Member Diallo seconded the motion.

PUBLIC COMMENT

Frances Neuht, 1060 Kane Concourse, came forward and stated that this project has been to the Planning and Zoning Board, to the Council, and has been turned down, and now they are circumventing the wheel by coming back to the Council. She stated that children go to the empty parking lot to play after school. She continued to express concern regarding the Design Review Board approving projects and the Town being overdeveloped.

Alexis Rivadeneira, 9381 East Bay Harbor Drive, came forward and commented on the cost for the Parking Trust. He expressed concern as to why developers should be allowed to come in front of the Council and request to buy into the Parking Trust, before they review their purchase to see if they have enough parking for site development to begin with. He suggested increasing the prices for the Parking Trust.

PUBLIC COMMENT CLOSED

Council Member D'Amico stated that as long as the Council is going to overlook a code that was just put in place, people are going to constantly come with these requests. And because of this, the Design Review Board does not feel comfortable in the decisions they are making. She said the Council keeps going forward with no kind of direction. She stated that the project was approved so long. She stated that in terms of figuring it all out, a Comprehensive Plan has to be done. She suggested the Council hold off on some of its decisions.

Council Member Yaffe stated that the Town had an audit of all its funds including the TDRs, and a presentation was made on the audit. He stated that it was very important that a determination was added on how much money the Town collected on TDR funds and Parking Trust funds, and it was reported. So, there is no uncertainty there at this point.

There was a moment of interruption, and Town Attorney Geller advised the audience to keep appropriate order to allow the Council to run its meeting.

Council Member Yaffe continued to state that the 9555 Project was approved with stacked parking in 2019, and nothing has changed in that regard. The only issue was the price. Over the years when the Council enacted ordinances increasing the price of TDRs and other things, such as fines for violations, they have looked at things prospectively and have always made sure the language of the ordinances that are being adopted takes into account projects that have come before the Town where applications have been submitted. This project is no different from the others. He stated that State law determines what the Design Review Board can currently consider, and it has changed within the last one or two years. He explained that the Board does not have a lot they can say as far as the aesthetic and so forth. He stated that he, too, shared concern that this evening a number of people expressed their concerns about the Design Review Board and the way those meetings are conducted.

He stated that he did not attend the meetings, but thinks it is something the Council needs to look at.

Council Member D'Amico mentioned her continued request for a Comprehensive Plan Workshop. Mayor Fuller reminded Council Member D'Amico he had asked the Town Clerk to poll the Council for a date to have a meeting on the Comprehensive Plan. She then asked if the request could be deferred. Both Council Member Yaffe and Mayor Fuller responded that changing the Comprehensive Plan will not change this request.

ACTION: Council Member Salver made a motion to accept the proposal offered by Mr. Bercow for payment of the original contract price of \$960,000 at the time of Building Permit, plus payment of an additional \$200,000 within one year after the Certificate of Occupancy to mitigate the effects of inflation. Council Member Diallo seconded the motion, and it passed 4-1 on a poll vote, with Council Member D'Amico opposing.

Council Member Bruder rejoined the meeting at this time.

15. A request by Bay Harbor Islands Property Owner II LLC, owner of the properties located at 9431, 9461, and 9481 East Bay Harbor Drive (The LaBaia North Project), to modify the TDR contract approved by the Town Council on June 22, 2022, to reduce the number of TDRs from the 46 approved to 31, due to modifications to the project.

Matt Amster, Bercow Radell Fernandez Larkin & Tapanes, 200 South Biscayne Boulevard, Miami, Florida, came forward and stated that he was representing the Applicant for the LaBaia North Project. He explained that the owner made modifications to their plans last June and is working through their Building Permit on those modifications. The major point of those modifications was to reduce the unit count of the building by 15. He noted that the project does have a contract with the Town for TDRs, but it needs to be amended to reflect the revisions and the reduction of units. He requested that the TDR contract be properly amended to reduce the unit count.

Council Member Bruder asked if the density was being reduced by the number of TDRs that the Applicant needs. Mr. Amster said yes. She asked if he also did something similar on another project and also returned TDRs. He responded that they did for the other LaBaia project.

Council Member Yaffe asked what the contract price of the TDRs was, and Mr. Amster said \$30,000 per space. Council Member Yaffe pointed out that the current price of a TDR is \$125,00 which means that if the TDRs come back into the Town's TDR bank, it would be beneficial to the town, because if additional TDRs are sold in the future, they will be sold at a much higher price.

Council Member Yaffe made a motion to approve the modification of the contract to reflect the lower number of TDRs which the applicant wishes to purchase under the modified plan. Council Member Diallo seconded the motion. Council Member Yaffe amended the motion to include language which states that “The town is authorized to execute the Addendum to Agreement for Purchase and Sale of Transferrable Development Rights”. Council Member Diallo seconded the motion, and all voted in favor.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated she was concerned about the Parking Trust because she has a lot of businesses in the Business District, and there is no parking. She stated that the TDR program is for the Residential District, and this project is to keep all their parking on the premises. She suggested the elimination of the TDR and Parking Trust programs or that they be looked at, as they are not working. She said they are causing a lot of friction and overdevelopment in the Town, with no stability.

Council Member Yaffe stated that whatever happened with respect to this project and the Parking Trust happened quite some time ago, and the only issue before the Council this evening is reducing the density of the project-the number of units. The developers decided to reduce the number of units and have larger units. It does not need as many TDRs, so they are asking to purchase a lower number of TDR units. The only issue before the Council this evening is the reduction of density, not the Parking Trust or parking spaces. Council Member Bruder added that the Council eliminated the ability for residential properties to be able to buy into the Parking Trust, which is intended for commercial uses only.

Alexis Rivadeneira, 9381 East Bay Harbor Drive, came forward and stated that he was concerned the Council had reduced the price. Council Member Salver stated for the record that the Council had honored the original price. They did not reduce the price. Mr. Rivadeneira suggested the Council delay this long-term decision until after the election, when a new body is in place.

Council Member Yaffe advised Mr. Rivadeneira that all that was being done was reducing the number of units. There will be bigger units, no change in price, and less dense units, which he thinks is good because the units are bigger with less vehicles. Mr. Rivadeneira stated that the Council’s decisions are not aligned on reducing the issues on parking and traffic, which has to be clear.

Mayor Fuller stated that the project does reduce parking issues. There will be fewer residents in the building, which means there will be fewer cars. Pricing and adding cars are not being discussed.

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion to approve the modification of the contract to reflect the lower number of TDRs, which the applicant wishes to purchase under the modified plan, and to include the language that “The Town is authorized to execute the Addendum to the Agreement for Purchase and Sale of Transferrable Development Rights”. Council Member Molly Diallo seconded the motion, and it passed unanimously on a poll vote.

16. **Consideration and Approval** of a private TDR Transaction for the transfer of three (3) dwelling units from (9201 West Bay Harbor Drive) to NIDO Multi-family Development (9880-9900 West Bay Harbor Drive).

Council Member Yaffe made a motion to approve the transfer, and Council Member Bruder seconded the motion.

Erin Grafton, Wernick & Co., 320 Miracle Mile, Suite 203, Coral Gables, Florida, was present representing the Applicant, Horizon BHI, LLC. She stated that the following item on the agenda was associated to this item for the purchase of two TDRs from the Town bank.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the TDR program needs to be eliminated, because it is not serving its purpose to help the smaller developments by giving them money to fix up their apartments.

PUBLIC COMMENT CLOSED

Council Member Yaffe explained the history of the TDR program stating that it was instituted with the approval of the State a few years ago when the Town was looking to amend the Comprehensive Plan. At that time, the Town Council wanted to increase the density, the number of units per acre. The State told the town, because of the way the Comprehensive Plan was written in the late 1980s, it could not change the Comprehensive Plan in terms of density per acre. The State also told the Town they have a limited number of units that can be built, and they could move them around if they wished to do so. So, the suggestion was that the TDR program be instituted. He added that in this case, it's a vacant property selling off units to another property, which enables them to build more units on that particular piece of property. Over the years, a number of the older buildings sold off units, and by selling off those units to a developer, they submitted themselves to the Town to have Code Enforcement inspect their property and advise of any violations and anything that need to be corrected. He explained that the money goes to the buildings, and they are able to invest that money into the buildings to improve them structurally, aesthetically, and otherwise.

ACTION: Council Member Yaffe made a motion to approve the private TDR transaction. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

17. **Consideration and Approval** of a TDR transaction for the transfer of two (2) TDR units from the Town- owned "pool" of TDR units to the future NIDO Multifamily Development project to be located at 9880- 9900 West Bay Harbor Drive. Enclosed are copies of the TDR application and applicant's Letter of Intent. This item is linked to Item #16.

Council Member Yaffe moved the item to the floor and noted that the revenue to the Town from these two TDRs is \$125,000 each. Therefore, \$250,000 will come to the Town, if the transaction is approved. Council Member Diallo seconded the motion

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the Town cannot find where \$4.1 Million went with the last attorney, and there is an investigation for where the government TDRs are. She alleged that TDR money was missing. She suggested the Town not continue with the TDR program as it is dangerous to continue do so.

Town Manager Lasday responded that a couple of meetings ago, an auditor came to the meeting and did a presentation on the TDRs, and \$6.1 Million is in the reserves-all from TDRs. The auditors did a complete investigation of all the TDRs since 2013.

Council Member Yaffe remarked that Mrs. Neuhut' s statement is false. The Town is not under investigation. All the money generated from the TDR sales are in the Town's account and will be used for projects in this Town.

Council Member Salver pointed out that in the last 10 years, two new parks were added, and there are also dog parks. The Community Center is a result of revenues from the TDR program. The 98th Street Park was built several years ago, the 92nd Street Park is being expanded along with the 96th Street Park on the corner for water access, and grant money was received to build a seawall. Once the seawall is built, the construction of the park itself can get started. The Tot Lot on the West Island was expanded a number of years ago.

Council Member Bruder clarified that it was not known where the TDR money was. An outside auditor did an audit on the TDRs from as far back as 2013, looked for every TDR, and was able to collaborate where they are. There is \$6 Million. She explained that the TDR monies can only be used for specific things (infrastructure-parks, buildings, a new Town Hall, etc.). Private TDRs cannot be sold, they can be negotiated privately with private individuals. They only come to the Council for ratification. The only thing they are told is when they get their TDR money, it needs to be used to fix their buildings.

Council Member Yaffe stated that the ordinance that created the TDR program requires an appraisal every year. One was just done, which is why the private TDRs are being sold for \$125,000, from \$60,000 some years ago.

Council Member D'Amico stated that the problem is that it is not known where the TDRs are being distributed. She asked that the TDR information be put into a plan to show where the units have been distributed, so that the infrastructure can be done properly and to understand the Town's parking needs.

Council Member Salver believed that the projects that were recipients of TDRs were distributed organically and evenly. In the process of reconciling the Town's TDR monies, a map with the location of all TDRs was provided. The larger projects are on the wider side of the island on the water bay and fewer smaller projects are there. The TDRs have not been distributed that unevenly throughout the east island.

Council Member Salver asked how many TDRs are left in the Town's TDR bank. Council Member Bruder responded less than 100. She agreed with comments by Council Member D'Amico and requested a map showing the movements of the TDRs to include where they come from and where they are going, as the Council needs to be careful and make sure they are balancing out the island with the TDRs. Town Planner Michael Miller reported that based on the 2022 TDR Annual Report, there were 87 units. Two (2) were sold last year bringing the number down to 85. Fifteen (15) more were obtained, bringing the current total to 100.

ACTION: Council Member Yaffe made a motion to approve the transfer of two TDR units from the Town-owned pool. Council Member Diallo seconded the motion, and it passed unanimously on a poll vote.

7. Discussion for the purpose of hearing public comments with respect to an application for variances from Sections 23-12(6)(a)(iii), 23-12(6)(v), 23-12(8), and 23-12(6)(a)(x) of the Town Code to construct a boat dock facility at 1135 103rd Street, Tract F, Bay Harbor Islands, by property owner BH Investment, LLC.

Niesen Kasdin and Nick Barshel, Akerman LLP, 98 SE 7th St #1100, Miami, FL 33131, was present on behalf of the Applicant.

Town Attorney Geller swore in the individuals who testified.

Mr. Kasdin stated that the Onda is a luxury project under construction on 103rd Street. They are seeking approval for a dock. He explained that the dock is regulated by DERM and where the location can be is based on conditions under water, the growth of seagrass. As a result of the condition there, the dock has to be put further out from the seawall. The previous request for the dock went to the Council on August 15th, and the biggest concern then was about the slips for larger vessels up to 50 feet in the center of the dock. They agreed to revise the plans to limit all vessels to 35 feet in length and to begin 30 feet out from the seawall, the minimum DERM will allow.

He recalled the previous Council Meeting where six Council Members were present and four voted to approve the request, but five votes are required for the item to pass. DERM reinspected the site and revised their interpretation of the minimum safe water depth required to moor vessels. They revised the dock plans on this basis, which allowed them to significantly reduce the extensions of the dock into the bay. The previous design had two-tiered configurations to account for greater water depth for the larger vessels, which were up to 50 feet in the center. At the previous hearing, the Council requested that a larger pier be removed, and all the slips be relocated to the minimum depth for 35-foot vessels, which they have agreed to. In the revised rendering, the slips were made smaller and pulled back, which resulted in significant reduction in extensions into the bay. Mr. Kasdin continued to present the comparison renderings. The maximum projection of docks was reduced from 73.5 feet to 36 feet. The maximum projection of mooring piles was reduced from 89.5 feet to 52 feet. Because all the slips now begin 16 feet from the seawall, the maximum projection of boats into the waterway was reduced by 50%, from 104 feet to 52 feet. They remain in compliance with all the Town's regulations, including the minimum setbacks on both sides. Only the main piers slightly exceed the code. The Onda dock will be for residents only. The Applicant continues to agree with all the operational conditions in the Town's Staff Report. He added that they are seeking the minimum variance that DERM will allow to moor vessels of any size in this location. The variances are strictly based on environmental conditions, as a valid judgement for variances.

Council Member Bruder asked how many slips they currently have versus what they had before. Mr. Kasdin responded 15 slips. She then asked if according to the Condominium Bylaws, only owners can have a slip at the dock. Mr. Kasdin said yes. She stated that many of the residents expressed concern that people would be sleeping and partying on boats. She asked how he would enforce these issues. Mr. Kasdin responded the Town itself restricts those activities, and by virtue of it being a luxurious condominium that has no short-term rentals, the residents would want a quiet environment. Additionally, by virtue of the reduction in the size of the boats, they cannot have them as liveaboard boats. Mayor Fuller clarified that the Council does want to make sure that these issues are in the Condominium Documents from the beginning, because it is more difficult to change later on-no sleeping and no partying after hours. Mr. Kasdin stated that they will agree to add these concerns as a condition to be included in the Condominium Documents as Rules and Regulations. Council Member Bruder asked if the Condominium Documents will be submitted to the Town for review, and Mr. Kasdin said yes.

Council Member D'Amico raised concerns to blocking of the navigation strip, how the dock would affect other properties, and the backing out of the boats. Bree Cocos, Ocean Consulting, 340 Minorca Avenue, Coral Gables, Florida, came forward and stated that the permitting for every property is different as they each have different environmental conditions. DERM will do an underwater assessment and tell them where they can build. Council Member D'Amico requested the Town Planner do some research on the town's coastline.

Council Member Salver asked Mr. Kasdin to restate the variances. Mr. Barshel explained the first variance is for the maximum dock projection of 25 feet. The second variance is requesting 50 feet, and 40 feet is required. The third variance is for the width of the docks when the vessels are moored 8 feet out from the shore. Four (4) feet are allowed, and they request 6 feet. The fourth variance is based on the Town Code's provision that a variance is needed if an environmental agency requires going out a certain distance. No variances are required for the side setbacks.

PUBLIC COMMENT

Luis Limeres, 10350 West Bay Harbor Drive, came forward and stated he has been a resident for the past 19 years. He stated that the applicant is requesting 16 vessels, and their plans show 12. He stated that each one of the vessels will have fuel tanks. He referred to comments that the boats would not be allowed to refuel at the dock but felt that the vessels by themselves would likely have gas tanks which means the possibility of an explosion or a fire. He expressed concern that vessels might end up in people's yards due to the effects of hurricane, that maintenance of the vehicles could oil to drop into the ocean causing contamination, that trucks will be providing supplies to the vessels, and that changes allowed by the Council for this application will become the standards for future projects.

Mrs. Limeres, 10350 West Bay Harbor Drive, came forward and suggested everything be left clear as it is now.

Council Member D'Amico asked Mr. Limeres if they were having issues with the music and with the sandbars coming closer. Mr. Limeres responded there is a stack of boats on Saturdays and Sundays, and they can hear the effects of music from Haulover.

Council Member Salver asked Town Attorney Geller if Mr. Limeres' statement that any decision the Council makes on this matter would be applicable to future applicants. The Town Attorney responded that Mr. Limeres statement itself is correct, if it's viewed in the context of the Town Code, which states it is sufficient grounds for a variance if someone was complying with the direction of the environmental agencies having jurisdiction. He said that for anyone who seeks to have mooring or dockage facilities (the Town Code, DERM, DEP, and the United States Protection Agency) it is a correct statement that everyone is entitled to the same protection of the law. It is viewed in the context that the Town Code says this is sufficient justification; only what is required by the environmental agencies is allowed.

Mr. Kasdin explained that the hardship grounds are based in the Town's code, which is a requirement of DERM. Each individual site is considered and judged separately, and what they may be able to get, other sites may not. He added that repairs and maintenance are not allowed on the dock. The dock has to comply with all requirements for the construction of a dock by the Florida Building Code's and DERM's regulations.

Frances Neuht, 1060 Kane Concourse, came forward and stated that she is against this hardship request. She questioned what the hardship was and suggested the Council turn down the request.

Ken Eskin, 1310 99 Street, came forward and stated that moorings and slips are not the same. He asked if there will be mooring on the side of the slips.

Mr. Kasdin responded that the mooring piles are for the 15 boat slips. Ms. Cocos added there will be no additional mooring at the dock facility. There will be 15 boats for the slips themselves. There will be no mooring offshore and no anchorage dockage offshore. The mooring piles will only be used to secure the slip they are associated with. Regarding hurricane concerns, the State of Florida and DERM require the Condominium Documents for all docking facilities to include language that vessels must be removed from the facility when there is a certain wind occurrence. Vessels left behind will be taken and confiscated before the hurricane or whatever event. She stated that there will be no fueling, which will be included in the State permit. Appropriate trash receptacles will be required, and no trucks and service of any kind will be allowed. And there are lots of regulations already in place by the State and by DERM to ensure these types of facilities are fully regulated; so, there are no worries for other residents in the area.

PUBLIC COMMENT CLOSED

Council Member Bruder asked if the docks were presold. Mr. Kasdin said he didn't have an answer but would venture to say many or most of them are not sold.

8. **Approval or Denial** of variance requests for the property located at 1135 103rd Street. In accordance with Section 2-22 of the Town Code, the Town Council shall determine whether to grant or deny the application for a variance. An affirmative vote of five (5) Council Members is necessary to grant the variances requested, and the decision of the Town Council is final. If the requests are granted, the decision of the Town Council shall be recorded in a Resolution to be prepared by the Town Attorney. It should be noted that any approval of the Town Council is subject to other requirements of the Town Code, Miami-Dade County Code, The Florida Building Code, FEMA, or any other applicable governing agencies.

Mayor Fuller asked the applicant if they wish to continue or withdraw. Mr. Kasdin stated that he did not wish to withdraw, but being it is a short Board, if there is more than one vote against the item, it would amount to a denial. He asked if there are two Council Members who are not comfortable with the request at this point, they would ask for it to be deferred to provide information that would provide comfort.

Council Member D'Amico asked if there was anyone from the Town's staff who could verify all that was presented as to the variances. Town Attorney Geller responded that there is Staff Report, and it is correctly represented that the Code provides that the existence of orders from an environmental agency with jurisdiction, is justification for a variance. He suggested the Staff Report be placed on record.

Council Member Salver asked Council Member Bruder what the relevance to them was preselling the slips. She asked what the point was of requesting the variances, if the slips have already been sold. Council Member Diallo asked if the Condominium Documents would contain such a provision.

Mr. Kasdin said he believed they would, because disclosures have to be made regarding what is allowed and what is not allowed. Mr. Kasdin asked that the requests be deferred for a month, and he would come back with answers to Council Members Bruder's and Diallo's questions, and with the Condominium Documents that have been filed by the State.

It was the consensus of the Council to defer this item.

21. **Discussion and Possible action** regarding continuation of the Arts Festival.

Mayor Fuller explained that he brought the item out of order because the contract will automatically renew, if nothing is done between now and the next fifteen (15) days. He went on to state the Art Festival was a success, and he wanted to confirm if everybody wanted to do it next year, in order to plan and continue along those lines; he wanted to get the Council's thoughts on the matter as well.

Council Member D'Amico responded in favor of continuing with the event and suggested there be a committee. Mayor Fuller explained that staff, himself, and the party that was hired to run the art festival went through step by step all the different things that they thought were good or bad, what needed to be corrected, and what needed to be improved. He asked the Council members who have anything to add to communicate to staff, who can convey the information directly to the event planner.

Derek Hodes, Momentum Marketing Group, 1031 Ives Dairy Road, Miami, Florida, came forward. Council Member D'Amico asked if there is a committee or task force that works with them and if there can be a resident on such committee to get feedback from the residents to get involved. Mayor Fuller stated that it would not be practical. He stated that they got the committee started for the most part with Momentum Marketing Group and staff. Any other thoughts that any of the Council Members have should be submitted to staff. Council Member Salver stated he did get feedback from residents, and the majority of them said they really enjoyed themselves. The overwhelming majority said the traffic made it not worth it with closing the street on a Friday. He stated that it might be a solution if the event can be relocated off of Kane Concourse. Discussion followed on the cost of the event, about \$175,000. Mayor Fuller explained that the biggest problem with the traffic was Bal Harbor and Surfside, it was not the town. It was the standard traffic that they have on Byron Avenue and on Collins Avenue. With the addition of cars and them refusing to assist in any way, there was the traffic, the lights, the construction, and everything along those lines. He stated that they had follow-up conversations. He said he has spoken with some of the elected officials in the neighboring communities, who have stated they will help out next year. As far as moving the event, they are trying to emphasize Kane Concourse. Not only are they trying to build business on the district, but they have to provide security within the festival, and for the artists when they leave their items overnight. Putting it on the side street would be in front of residents' homes blocking them, and they wouldn't be able to effectively secure the art.

Council Member Bruder asked about starting the event later. In regard to the traffic, Council Member Yaffe pointed out that the lights on Kane Concourse are misaligned, and the traffic doesn't flow evenly. He mentioned that during the construction of the Bal Harbor garage, Surfside and Bal Harbor did not have police directing traffic.

They do not assist with the flow of the traffic. He encouraged staff to meet with elected officials in the neighboring communities, management, and the Police Departments to try and coordinate, as it would be a benefit to all three communities. Town Manager Lasday stated that notices were sent to managers in all the adjoining communities, and the Police Chiefs also sent out notices to all the chiefs. Mayor Fuller noted that mailings with the timeline and everything else were sent to the residents of the entire 33154 area, including Bal Harbor and Surfside, indicating in advance what was going to happen.

Council Member Bruder stated that moving forward, the town should share in the revenue that comes in from the Art Festival, as she did not think the town should bear the whole cost. Plus, she did not want commercial buildings (sales offices) to have booths during the festival. As far as sharing revenue is concerned, Mr. Derek Hodes, from Momentum Marketing Group, explained that the event is being produced or owned by the town. He stated that the Coconut Grove Art Festival is a nonprofit organization that was created. They go out and put on the festival. Here, the town is looking for someone to create the festival on their behalf. He stated that they could gate the event if they wanted to make money. He said it is a unique situation in the town. Unless there is better utilization of the blocks around the main thoroughfare, on the Friday of the event people are still going to complain about the traffic.

Mayor Fuller explained that the event has to be kept on the side of Kane Concourse closer to the school for safety reasons, because it is where the garage is.

Council Member Bruder again mentioned the issue of shared revenue through a percentage. Mr. Hodes stated that it does not exist. He stated that based on how the festival is being brought to them and how they are working with the town, if it were not for the sponsorship, the concessions, the beer, and everything that is sold, all of the projected revenue would be lost, they couldn't take the festival on, as it is not one that generates enough revenue from a management standpoint.

Council Member Salver asked Mr. Hodes if he had any experience with conducting an art festival that was confined to a small space, and if it was possible to pull off a high-level art festival on that very limited space. Mr. Hodes responded that based on what's in the town and the demographics, if the event can start on time, they will have the artists that the town is seeking. They would need to start within the next 60 days or so. He explained that having space to fit 100 artists or more doesn't mean it is the right thing to do, because there are other things to be concerned with like fire, fire rescue, backup houses for artists, traffic flow, etc. He continued to explain that if the artists booths are increased to 60-80, with the concessions, the music, and sponsors, they have to be concerned with safety for walking, strollers, etc. He stated that he was confident they can bring in really great artists, and he would like to launch the invitations for artists by May 1st. Council Member Salver asked if the festival can be held in one day, as opposed to two.

Mr. Hodes explained that it is not worth it for the artists. Discussion continued about recruiting artists early to get a higher caliber, the town having good opportunity to do so since there were no other festivals in the northeast corner of Miami-Dade County during that time, getting a more eclectic group like street art, getting more modern art, getting jewelry art, complaints about the food at the last event, joining the annual picnic with the art festival, and getting sponsors for the area with the rides and security.

Mayor Fuller informed the Council that the list was reviewed to see what could be done to cut costs. One of the things was to cut the night concert, as many people did not stay around for it. The money for the picnic was included, but they discussed separating the picnic. The cost of the Art Festival will be lower than the last time. There was discussion regarding the number of booths and event insurance. It was stated that the insurance was not purchased because it increased to \$50,000.

Council Member Bruder spoke about the hard work for staff in planning events, and said she prefers both the picnic and the art festival to be wrapped into one weekend, which would be better for staff. Mayor Fuller stated that the idea to mix anything in with the event can be dealt with during budget season. Under the current agreement, if the town is not going to move forward, Momentum Marketing Group has to be notified now. Tonight, the Council is only dealing with whether to move forward with the Art Festival.

Council Member Salver asked about the financial commitment. Town Manager Lasday said the event would cost approximately \$198,000 to \$200,000.

Mayor Fuller made a motion to move forward with the Art Festival, and Council Member Bruder seconded the motion.

PUBLIC COMMENT

Adam Ziefer, 10350 West Bay Harbor Drive, came forward and stated that he was confused with the Art Festival, because Council Member Bruder commented it was great for people to come to Bay Harbor Islands and see the businesses. He asked her if she did not want the people to move to the town, as she was against the Sales Centers being in the event. Council Member Bruder responded she wants people to come to the Business District to keep the businesses vibrant and alive. She didn't like the selling of condos in the middle of the Art Festival. Mr. Ziefer stated he is a big supporter of art and loves Bay Harbor Islands. He is in real estate and is selling everybody on Bay Harbor Islands. He stated that it appeared as though the Art Festival was for a majority of non-Bay Harbor Islands residents; for everybody outside, the residents of Bal Harbor and Surfside. The Bay Harbor Islands' residents had the majority of the problems with the traffic issues. He suggested doing something on Bay Harbor Terrace, rather than taking up all or half of Kane Concourse.

He stated that it wears on some of the residents as some may need to work. They are coming in and out, and they are unable to do that Friday, on that weekend when they are trying to get around. It's very difficult because they have to deal with half the traffic pattern.

Council Member Yaffe stated that he didn't think Bay Harbor Terrace was large enough to handle the Art Festival. He also noted that art festivals were held on Kane Concourse in the past.

Council Member Bruder asked Mr. Ziefer what made him feel the people of the town did not come out to the festival. Mr. Ziefer reiterated that the residents were inconvenienced the most. He said it wasn't just a Bay Harbor Islands only art festival; people from all around came.

Mayor Fuller stated that traffic was not bad on Saturday and Sunday; Friday was the key. He stated that he spoke with some elected officials of Surfside and Bal Harbor, and they are willing to work with the Town next year. He explained that the event has to be near the parking garage for safety. It cannot be in the residential areas; they want to keep it in the commercial area, so the impact is limited. Assistance with traffic is needed from those neighbors.

Council Member Diallo suggested starting the event later as it was really difficult with the traffic.

Ken Askin, 1310 99 Street, came forward and stated that he attended both days of the event, and thought it was very nice. He said Bay Harbor Terrace was not a good place for the event. He stated the idea was to promote the stores. The more that can be done to promote the event and get the people to the town would be good.

PUBLIC COMMENT CLOSED

ACTION: Mayor Fuller made a motion to move forward with the Art festival. Council Member Bruder seconded the motion, and it passed 5-1 on a poll vote. Council Member Salver opposed, stating that he thinks the budget should be reduced and the event should be one day.

ORDINANCES ON SECOND READING:

There were no ordinances for second reading

ORDINANCES ON FIRST READING

9. **Consideration and Approval** of an Ordinance on First Reading amending Sections 18-1 through 18-4 of the Town Code delegating the authority for issuance of Permits for work in the Public Right-of-Way from the Town Clerk to the Town Engineer.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 18, ARTICLE 1 OF THE TOWN CODE ENTITLED “STREETS AND SIDEWALKS”, REVISING SECTIONS 18-1 THROUGH 18-4 PERTAINING TO THE ISSUANCE OF PERMITS FOR WORK WITHIN THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICT AND REPEALER; AND AN EFFECTIVE DATE.

Council Member D’Amico moved the item to the floor and Council Member Yaffe seconded the motion.

Council Member Salver explained his concerns to the way the ordinance is written with delegating the authority from the Town Clerk to the Town Engineer. Town Manager Lasday suggested reassigning the work/functions to the Town Manager instead, who can then delegate them. Town Engineer Carrero-Santana explained that when a project is permitted, the developer must meet certain criteria, and this task requires expertise to ensure that what the developer is proposing meets the Town’s standards.

Town Attorney Geller explained that this ordinance deals with engineering questions and felt the review functions of the permit should be done by the engineer. It could be best accomplished by reassigning the task to the Town Manager who may then delegate. He recommended the motion be amended to strike the word engineer and replace it with manager.

Council Member D’Amico amended the motion to strike the word engineer and replace it with manager. Council Member Diallo seconded the motion.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and commented that there is a problem with the Design Review Board approving development plans. She expressed concern with the Town Manager being responsible for this task. She stated that there are big problems with the rights-of-way. She asked why development site plans are not going to the Council for approval. She spoke about problems with the 1000 Kane Concourse project putting fences in the easement or the setback on the site, there site plans not being correct, missing municipal parking on East Bay Harbor Drive that was illegally approved, exchange for their breezeway, not allowing them to put steps in the front or have a front entrance, and nobody being held accountable because the DRB is approving the plans and not the Council. She stated that there is a problem with the alley, because this particular property is divided by an alley, and they moved over the alley.

Council Member D'Amico stated that she asked the Town Planner to put a section together to understand what has been approved, with the location of the curb cuts and the parking. She stated that given that they had moved the alley, she was not certain what it was now, and she is trying to get a Site Plan of the Business District.

PUBLIC COMMENT CLOSED

ACTION: Council Member D'Amico made a motion to approve the ordinance on First Reading and to strike the word engineer and replace it with manager. Council Member Diallo seconded the motion, and it passed 5-0 on a poll vote. Council Member Yaffe was not present when the poll was taken.

10. Consideration and Approval of an ordinance on First Reading modifying Section 23-11(A)(6) of the Town Code to increase the allowable building height in the RD Single-Family Residential District. Sponsored by Mayor Joshua Fuller.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO ALLOWABLE BUILDING HEIGHT IN THE RD SINGLE FAMILY AREA; AMENDING CHAPTER 23 ENTITLED ZONING AND PLANNING; AMENDING ARTICLE 1 ENTITLED ZONING REGULATIONS; AMENDING SECTION 23-11 ENTITLED LAND DEVELOPMENT REGULATIONS; AMENDING SECTION 23-11(A)(6) TO INCREASE THE ALLOWABLE BUILDING HEIGHT TO ADJUST FOR POTENTIAL FLOODING AND OCCUPANT USABILITY; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Mayor Fuller moved the item to the floor and Council Member Diallo seconded motion.

Mayor Fuller explained that he was not trying to change anything else. The ordinance does not add additional floors. It does not add anything else to homes. He explained that he received comments from residents that one of the issues is that a lot of them are self-insuring now because of flood insurance, and they want to move the base level of their homes up a little bit. And because of current height restrictions, they want to bring the inland homes on the west island up to the same height as the ones on the water, just so they can bring up the baseline.

Council Member Bruder expressed concern that changing the base level would make for a three and a half story building, and the lower adjacent homes will not have any sunlight, as they will be blocked in. She said she wasn't opposed to the change for the homes on the perimeter of the water.

Mayor Fuller responded that the waterfront properties already have it. The ordinance is changing so that the homes that are not on the water can be equal to the ones on the water; it's not adding floors. Council Member Yaffe concurred with comments by Council Member Bruder. He stated that some of the new homes being built on the interior lots are so high next to existing homes.

Council Member D'Amico explained that the issue is not just the height; it is also the building of the concrete basements and flooding neighboring properties. She asked that the matter be studied.

Mayor Fuller withdrew his motion.

22. **Discussion and Possible action regarding Town Hall Facilities.**

Council Member Bruder expressed concern for the safety of staff at Town Hall. She felt that fixing the building would only be a short remedy, because three years from now it will need to be fixed again. She suggested knocking down the facility and building a municipal parking with offices above, using TDR monies to fund the building, selling a strip of the lot next to the Landon Hotel and add that money for building on the garage, building the facility higher and have the last stories for the Town facility, and putting parking on the bottom and Town Hall on top. She stated there is \$8 Million in TDR funds for a municipal parking lot.

Council Member D'Amico suggested a plan be put in place before making a decision. She saw Town Hall as a sick building and felt the roof should not be replaced until everything is fixed. She said it is a poorly planned space for growth. A building with more square footage should be built in the same space, developers should be charged more for parking, there should be a comparison of the numbers for construction, and a few other things should be incorporated, which would solve all the problems.

Council Member Yaffe stated that the issue tonight is whether they were keeping the building or getting rid of it. He said he was in favor of tearing down the building. He suggested the 95h Street lot as a good place to put the new building. He asked that a decision be made on whether the building is being taken down and to figure out where to put it.

Mayor Fuller stated that the question is whether the building is to be taken down and whether to instruct staff to look for an architect to get some outside design ideas.

Town Attorney Geller noted that one of his partners, Skip Miller, is a public finance specialist and can probably assist in how to pay for the new building.

Mayor Fuller stated that when he and the Town Manager were in Washington, DC, they mentioned looking for federal funds for the new building. There are no federal funds available for town hall, but they might be able to do something with regards to the police station.

Mayor Fuller asked who was in favor of tearing down Town Hall. Council Members, except Council Member Salver, expressed agreement to tearing down the building.

Council Member D'Amico suggested a massing study be conducted.

Council Member Yaffe suggested that staff study the issue and advise of the best place to put the new Town Hall. Town Manager Lasday asked about scheduling a workshop to discuss some ideas. The Council was not in favor of the workshop. Council Member Yaffe suggested the Town Manager obtain experts to look at possible locations, narrow them down, and then move forward.

PUBLIC COMMENT

Alexander Rindner, 9841 East Broadview Drive, came forward and stated that buildings are repairable. There are a lot of things that can be looked into. Considering the late hour, he suggested the matter be deferred. He added the Council is talking about spending potentially millions of dollars, and as Council Member Salver pointed out, hundreds of thousands of dollars have already been spent improving the building. He stated that there are long-term consequences, and the issue warrants a little more attention and should be deferred.

Council Member Bruder stated that she was not in favor of deferring the matter. She explained to Mr. Rindner that the reports on Town Hall state that it has no barrier on the bottom; it has mold; there are electrical issues, there is no air-conditioning, and it is seeping from the bottom. She said the building has outlived its ability. Additionally, the Police Station is too small, and the building is not ADA compliant.

Mayor Fuller stated that the Council was not committing to anything tonight. They are saying their intention is to tear down the building. If a report comes back stating that a solution has been found, they are willing to hear it. The building will not be torn down tomorrow.

Council Member Yaffe added that the building is a disaster from everything that he has heard tonight, and he didn't know if there was any way to fix it. He stated that there are no plans for part of the building; there are electrical issues that do not meet code. He said if someone comes back with a feasible way to address the issue and the lifespan of the building can be expanded for a good number of years, he will look at it. But they have to make an initial determination that they have to move it.

PUBLIC COMMENT CLOSED

ACTION: Council Member Bruder made a motion for a new Town Hall to be built and for staff to look for another location. If staff finds the ability to save the building, that would be acceptable. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote. Council Member Salver noted that his vote was in favor of studying the concept.

11. **Consideration and Approval** of an ordinance on First Reading amending Chapter 5, Section 5-23.01(f) of the Town Code pertaining to meetings of the Design Review Board. Sponsored by Council Member Bruder.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING CHAPTER 5 OF THE TOWN CODE, ENTITLED “DESIGN REVIEW BOARD”, BY REVISING SECTION 5-23.01(f) PERTAINING TO MEETINGS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Bruder moved the item to the floor and Council Member Yaffe seconded the motion.

Council Member Salver made a motion to extend the meeting until this item is voted on. Council Member Bruder seconded the motion, and all voted in favor.

Council Member D’Amico stated that she has had long discussions about the Design Review Board. She discussed the ordinance with the Town Attorney and was in favor of it. She would like to keep adding to it in the future.

Mayor Fuller stated that he was in favor of the ordinance but pointed out changes that need to be made in Section F to put back in the word “shall”, to reword the sentence with the following language: “be scheduled monthly at a date to be selected by the Board Chair...”, and to add language to state the DRB will proceed to finish an item that it started prior to 11:00 p.m.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and spoke about the Council giving authority to the Design Review Board to approve development projects, when the Council should be the ones having discussions regarding these quasi-judicial hearings, in order to better the community. She referred to the 1177 Kane Concourse development.

PUBLIC COMMENT CLOSED

Town Manager Lasday reported she requested that the developers of 1177 Kane Concourse come before the Council with any requests for changes to the development, in addition to going to the Design Review Board.

Council Member Bruder stated many years ago the Council served as the Planning & Zoning Board (now DRB). She said that she attended last night's DRB meeting and felt disappointed by the Town Planner who did not look at the developments around the area of the request and was saddened that the DRB did not recognize that a building will be completely surrounded by the new building, until it was pointed out to them. She felt all requests for developments should end up with the Council.

Council Member Yaffe explained that many years ago the Council served as the Planning & Zoning Board, but appeals were made to the same body, which did not make any sense, so they separated them. The code does not provide for the Town Council to review what the DRB does, unless it is for the gateway properties or bonus height. He stated the Council has to look into having more responsibility with respect to approval of projects, whether it be a two-level process with the project first going to the DRB and then to the Council. Council Member Bruder agreed.

Town Manager Lasday stated that the 1177 Kane Concourse project was able to come back to the Council because such language was incorporated into the title agreement; it was not in the Developer's Agreement.

Council Member Bruder said she believes that multi-family developments should come before the Council for approval.

Town Attorney Geller suggested that review of developments by the Council be based on size and scale. Council Member Bruder disagreed.

Council Member Yaffe suggested this discussion continue on a future agenda item, as to how the Council wants to move forward.

ACTION: Council Member Bruder made a motion to approve the ordinance on First Reading. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

Council Member Bruder advised she would not be available on April 19th for the Regular Council Meeting and asked the Town Clerk to poll the Council Members for other dates.

It was consensus of the Council to roll over the remaining items to the next Council meeting.

12. ~~Consideration and Approval of a Resolution amending the Building Permit Fee Schedule set by Resolution No. 2270 to establish a reduced fee for applicants that choose to use a "Private Provider" for Building Plan Review and Inspections, as per Florida Statutes, Section 553.791. Enclosed is a copy of the fee schedule and legislation.~~
13. ~~Consideration and Approval of funding for the Design Build Project BHI 228 92nd Street Dog Park Extension. Enclosed is a copy of Waypoint Proposal.~~

18. — ~~Discussion regarding an amendment to Sections 23-1, 23-4, and 23-5 of the Town Code to regulate the location of Real Estate Sales Centers in the town. Enclosed is the Town Planner's Staff Report and a draft ordinance.~~
19. — ~~**Discussion and Possible** action regarding the lease with Sunshine Gasoline Distributors, Inc. for operation of the gasoline service station. Enclosed is a copy of the lease agreement.~~
20. — ~~**Discussion and Possible** action regarding zoom meetings.~~
23. ~~**Discussion and Possible** action regarding Section 23-12 (15)(e) iii of the Town Code regarding projections into setback areas. Sponsored by Council Member Bruder. Enclosed are copies of the Code provisions.~~

There being no further business to address the meeting adjourned at 11:11 P.M.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A SPECIAL COUNCIL
MEETING**

A Special Meeting of the Town Council was held on Tuesday, March 14, 2023, at 6:05 p.m. Upon roll call the following members responded:

Mayor Joshua D. Fuller
Vice Mayor Elizabeth Tricoche Council Member Stephanie
Bruder Council Member Teri D'Amico Council Member Molly
Diallo Council Member Robert Yaffe

Council Member Isaac Salver was absent.

Mayor Fuller stated for the record that he was not in favor of this meeting because at the end of the last Council Meeting, all of the Council Members had agreed to push the items to the April meeting. Council Member Bruder stated that it was already after 11:00 p.m. when the question was asked. However, looking at the agenda and some of the items that needed to be voted on, especially the 92nd Street Dog Park renovation project, that was being held up, she decided on the meeting. Vice Mayor Tricoche apologized for missing the regular meeting as she was ill. She clarified that items needed to be addressed and would have created difficulty for the staff and potentially lapses in some issues, if the Council did not meet and manage them.

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

1. **Consideration and Approval** of a Resolution amending the Building Permit Fee Schedule set by Resolution No. 2270 to establish a reduced fee for applicants that choose to use a "Private Provider" for Building Plan Review and Inspections, as per Florida Statutes, Section 553.791.

**A RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF BAY HARBOR ISLANDS,
FLORIDA AMENDING THE FEE SCHEDULE
OUTLINED IN RESOLUTION NO. 2270 TO
ESTABLISH A REDUCED FEE FOR
APPLICANTS THAT HIRE A "PRIVATE
PROVIDER" FOR PLAN REVIEW AND
BUILDING INSPECTIONS AS SPECIFIED IN
FLORIDA STATUTES, SECTION 553.791;
PROVIDING FOR INCORPORATION OF
RECITALS AND SETTING AN EFFECTIVE
DATE.**

Council Member Yaffe moved the item to the floor and Vice Mayor Tricoche seconded the motion.

Vice Mayor Tricoche explained that the item was being addressed as a necessity to comply with state law. It was not an independent choice of the Council. Mayor Fuller concurred. Council Member D'Amico asked for an explanation of the regulations.

Town Attorney Geller explained that the State is trying to mandate the percentage of discount the town is required to give. Based on the Vice Mayor's comments when the matter was last addressed, he and Council Member Salver contacted the Florida League of Cities. He also distributed a memorandum about the item. He spoke with the legislative director and one of their advocates from the Florida League of Cities to see if any city in the State had figured some work around the regulations, and they had not heard of anyone, which is why the League continues to fight the regulation. He stated for the record the Town Manager, the Council, and the Town Attorney all dislike this law.

Council Member D'Amico commented on the vagueness of the language. She stated they have not even worked it out to show some kind of scale that can be used. She felt the permit process is difficult enough to start with, much less having to figure out percentages. She asked if the State was assuming the liability. Town Attorney Geller responded that it was an unfunded mandate; they passed the law and expect the town to live with it.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked who is accountable for out on the field permits since based in local government the Building Official and Code Enforcement personnel are immune from any liability; who would be the plan review members when a Building Official may not replicate a plan review on inspection performed by a Private Provider; if the Council will still be held accountable for holding quasi-judicial hearings for approval of development site plans; and if the Town Planner, the Chief Building Inspector and the Chief Engineer would be reviewing the site plans. She suggested the insurance requirements for the Private Providers should be increased as they are too low.

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion to approve the resolution. Vice Mayor Tricoche seconded the motion, and it passed unanimously on a poll vote.

2. **Consideration and Approval** of funding for the Design-Build Project BHI-228-92nd Street Dog Park Extension.

Council Member Bruder moved the item to the floor and Council Member Yaffe seconded the motion.

Council Member Yaffe asked that an overview of the project be given to the public, so the residents can understand what is being done.

Council Member D'Amico asked what stage the project was in. Town Manager Lasday responded that the contract had not been signed yet.

Town Engineer Rodney Correro-Santana outlined the events for the project with FIU providing a concept level in 2021 and the town issuing an RFP to select a design build firm on June 27, 2022. Three firms participated in the pre-bid meeting and two bids were received from Waypoint Contracting, Inc. and Tadeos Engineering, Inc. In September 2022, the RFP Evaluation Committee selected Waypoint as the highest ranked firm, and the Town Council approved the selection in October 2022. The Council was unsatisfied with Waypoint's design and requested the Town Manager negotiated with the company for a plan that more closely resembled the FIU concept. In December 2022, a meeting was held with town staff and Waypoint with the goal of implementing the design by FIU and to add some items from Waypoint's bid. A portion of the park will be demolished, making an area for small dogs and an area for large dogs. Signals will be installed classifying the dogs by weight. Large canopy trees will be provided, and the existing trees will not be removed. The new design will implement the meandering fence in the lines between the two pavilions in each of the dog parks, which is part of Waypoint's design. Pavers will be added instead of just concrete sidewalk. The entire fence of the park will be painted to match the color of the newly installed fence that was part of the negotiations. Additional aesthetics features and landscaping were added to the project. The Town Engineer then described the scope of the work involved in the project.

Vice Mayor Tricoche expressed appreciation to everyone who worked on the project. She confirmed that although some spaces were being lost by expanding the dog park, space is available all along 92nd Street and East Bay Harbor Drive. She requested the placement of the two-dog water bowls in the 98th Street Dog Park. She thanked everyone for changing the spike fence, which she thought was dangerous. She referred to the poor condition of the 98th Street Dog Park on the dog side that is always filled with mud and is never clean. She asked staff if they were confident sod was the best choice for the entry point and how they plan to mitigate the issues seen in the 98th Street and 92nd Street Dog parks, which is the biggest issue area with large degradation that will likely get the most amount of use and break down the quickest.

Town Engineer Santana suggested more sod be placed in the area. Town Manager Lasday suggested the installation of pavers in that area. The Vice Mayor asked if it would make sense to put a 5' strip of artificial turf at the entrance where the sod gets eroded and becomes like mud. Mr. Santana stated that the artificial turf holds the dogs' urine, which smells bad. He agreed pavers could be installed as suggested.

Mayor Fuller suggested putting the five-foot strip of artificial turf in the five-foot entry to the park, so people are not all walking on the exact same spot, with the understanding that if it doesn't work after a short period of time, it can be ripped up and sod be put in. Vice Mayor Tricoche suggested the use of rocks in that area and that cameras be placed in the dog parks. Council Member Bruder stated that the artificial turf does not work. She suggested pavers be installed. Mayor Fuller suggested more frequent maintenance and closing the park every couple of days to let the sod regrow.

Vice Mayor Tricoche asked about the project completion time. Town Manager Lasday stated that the project will start soon and will be completed by October 1st. The final payment will be made on October 2nd.

Council Member Bruder amended the motion to include the installation of pavers at the first 5' of the entrance to the 92nd Street Dog Park. Council Member Yaffe seconded the motion, and all voted in favor.

Council Member D'Amico asked if shop drawings will be provided, because she was concerned about fencing and how all the materials would play together. Mr. Santana stated that shop drawings are always provided for review as part of the construction process, and he can share them with the Council. There will be an additional cost for the drawings. Town Manager Lasday stated that would mean delaying the project. She said she wanted to be able to sign the "Notice to Proceed" and get the job started. Council Member D'Amico explained the process for preparing shop drawings. She asked if there was a color pallet for the fence color. Mr. Santana informed her that the existing fence would be painted to match the meandering fence.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and spoke about the dog park encroaching onto the parking lot. She continued to speak about the need for parking, a place for kids to play, and taking away of land.

PUBLIC COMMENT CLOSED

Council Member Bruder mentioned that the other side of the park will be upgraded for people.

ACTION: Council Member Bruder made a motion to approve funding for the Design-Building Project BHI-228-92nd Street Dog Park Extension and that pavers be installed at the first five (5) feet of the entrance to the park. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

DISCUSSION ITEMS:

3. **Discussion** regarding an amendment to Sections 23-1, 23-4, and 23-5 of the Town Code to regulate the location of Real Estate Sales Centers in the town.

Mayor Fuller explained that the Council had previously discussed the issue of removing the ability for temporary Sale Centers. He asked the Town Planner to describe the proposed ordinance. Town Attorney Geller advised the Council that there were two options in the draft ordinance that they need to select from.

Town Planner Miller reported there have been some requests for Model Centers/Sales Centers in the downtown area in the last few months. Based on the Town Code as written years ago, the Council's desire was to encourage the street level spaces to be active with less office and more restaurants, retail, and professional services. There was a rush of requests for Sale Centers. There is only one Sales Center in the Residential Area on the lot next to the Onda development. Somebody was looking to develop the site and was looking to use it. Code Compliance had to shut them down. The Council asked him to look into the code to see what could be done. There are a couple of code sections involved. He suggested a definition be added to the code, if the Council wanted to pursue the matter. He also provided a couple of options for the Residential Areas to ban Sale Centers entirely or when the builder is building initially, they can use one of the units as a model while they are selling. Regarding the Commercials Areas, ban them on the ground floor, allow them on the upper level of an office building, and put a termination date for those on the street level. Vice Mayor Tricoche stated that she did not want Sale Centers in the Residential Districts because they have created a certain measure of exposure and chaos, which are not conducive to living in a residential neighborhood. She prefers to see them in the office buildings on the second floor as having them in the Residential District is inappropriate. Council Member Yaffe agreed with the Vice Mayor's comments.

Council Member D’Amico stated that she did not think any of the construction projects that were approved would be able to fit a Sale Center there. One was unique because it had the property next to it. She agreed Sales Centers should be on the second floor or higher in buildings on Kane Concourse. Council Member Bruder asked if the Council was asking that the existing Sale Centers on the ground floor in the commercial areas be moved.

Vice Mayor Tricoche responded no. She explained those were given an end date and will have to move upstairs at the end of the date they were given. Council Member Yaffe clarified that the Sale Centers that were approved have an end date, so they will also not be able to extend their leases. Mayor Fuller added that no grandfathering was included. He further stated that when the last application was before the Council, it was made very clear it was a one-time thing, and it was their last chance. After that, the Council wanted the ordinance to come before them to not allow sale centers on the ground floor or in the residential district. There was further discussion regarding the location of Sale Centers. Council Member Yaffe provided the location of the existing ones by 1060 Kane Concourse, 1160 Kane Concourse, and 1111 Kane Concourse. Vice Mayor Tricoche noted that the 1170 Sale Center is on the second floor.

Mayor Fuller referred to language included in the ordinance, which stated that “It shall not be construed to include commercial real estate brokers or offices for the general sale or leasing of real estate.” He wanted to see how that falls within the definition of retail, which is required to be on the ground floor. He explained that businesses like long-term brokerage offices, long-term real estate office, or doctor’s office, or anything else that have been there before are grandfathered.

Council Member Yaffe stated that the code has, with respect to existing buildings, that a certain percentage of the ground floor has to be retail. If that percentage is met, then a certain percentage doesn’t have to be retail. If a non-retail space vacates and that space is empty for 90 days, it has to revert to retail.

Mayor Fuller stated that he didn’t want the language to create a loophole for them to get back in, and he asked the Town Attorney to close the loophole, if the ordinance comes back to the Council.

Mayor Fuller referred to the wording of Option 1 that states “such temporary uses located within the building being constructed shall be permitted”. He stated that he finds it dangerous depending on the level of how far along the building has been constructed, and it creates a loophole.



He stated that he did not have a problem if the building was essentially 99% done and they wanted people to come in and see a model. He advised that the language in the option that refers to “the building essentially being close to completion before it’s shown inside” has to be tightened to a certain point.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that recently the Council approved, without the developers inquiring on a hardship variance, to allow a substantial number of nonconforming Real Estate Centers/Models on the ground floor of Kane Concourse without requiring parking. She said there are now too many that are not regulated. She asked that the ordinance not be allowed.

Matt Amster, Berrow Radell Fernandez Larkin & Tapanes, 200 South Biscayne Boulevard, Miami, Florida, 33131 came forward and stated that the ordinance was highly restrictive, as it is basically saying any Sale Centers has to be on the second floor of a building on Kane Concourse or nowhere else in the town. He stated that they are representative of people who are looking to keep indoor and have other Sales Centers, and this would tie their hands. There is a great benefit to having Sale Centers in the town. They bring the people and get them excited. Many of the high-quality projects in this area and in other nearby locations are still using actual Sale Centers. He continued to explain the benefits and the reason for the Sale Centers. He added that there are ways to figure out security purposes, perhaps with some other regulations throughout for Sale Centers to be at the properties themselves, or at least to have the market there, and let people have the opportunity for these temporary locations to utilize the ground floor.

Dave Sanchez, 1080 94 Street, came forward and stated he supports the Sale Centers. He felt this incentivizes the business owners and makes the Business District livelier. He suggested the Sale Centers be in the upper floors. Mayor Fuller stated that was the point the Council is trying to make. They are trying to make it so that there is still a little more life on Kane Concourse. Sales Centers close at 5:00 p.m., but restaurants stay open.

ACTION: Vice Mayor Tricoche made a motion to remove the option from the ordinance to have Sales Centers in the Residential District, to require they be on the second floor or higher in the Commercial District, to make sure any loopholes in the ordinance are closed prior to First Reading, and to change the wording of the following language “such temporary uses located within the building being constructed shall be permitted” to state that when a building is near completion, the developer can have a model unit in the building that people can look at, not a Sales Center. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

4. **Discussion and Possible** action regarding the lease with Sunshine Gasoline Distributors, Inc. for operation of the gasoline service station.

Council Member Bruder stated that the building has been there a long time, and they provide a service to the town. She said a gas station that also services cars and flat tires is needed around the area; plus, they have done a wonderful job.

Vice Mayor Tricoche wanted to ensure there is the capacity to self-sustain to the extent possible. She stated that the gas station is critical for the town. It has supplied the local area with gasoline to evacuate and to re-enter the island in time of hurricanes and in time of need. She said she views the gas station as a supportive structure that the town has utilized in time of need, something the town needs for support of the residents, which allows the town to maintain other structures in times of need.

Council Member Yaffe agreed with the comments made by Vice Mayor Tricoche and Council Member Bruder. He stated that as the town moves forward with the new bridge project, there has to be some type of contingency written in the lease renewal that may provide for temporary closure or moving of the gas station, so the town can proceed with construction of the bridge.

Council Member Bruder stated that this gas station also has a generator, which was put in to ensure there is gas during hurricanes. She mentioned the lease contains restrictions for not selling beer and wine, because it used to be Bay Harbor Islands Fine Foods.

Mayor Fuller stated that he too wanted to keep the gas station, because it is a huge amenity for all residents. However, he believes the lease has to be rewritten, not just extended, because a lot of it is badly outdated. It has to be redrafted entirely so it will work. He stated the Council has to discuss whether they want to use market rent or below market rent as an incentive.

He explained that the lease already includes a statement that if the Town has to do something with the bridge, if it is essential or something along those lines, they can shut it down for a while or terminate. He stated that he did not like having an overly broad term of essential. He explained that right now all of the different steps on the bridge and the timeline are not known. And as the Town seeks state, county, and federal funds, it doesn't know what restrictions they are going to have. So, it is not fair to the tenant (the gas station) or to the town to have that ambiguity. He stated that he would not have a problem with instructing the Town Attorney to start drafting a new lease with modern terms; nothing that says, "if it is essential for the bridge construction". It has to be short term, meaning there has to be a provision for the short-term termination or suspension of the gas station. He clarified that he did not want a provision in the lease requiring the Town to give, for example, six months' notice, because that might prevent the town from getting grants. He said he would prefer it to be set up so that, should the town have any concerns about the need to make any changes for grants, design, etc., they would have to temporarily close the gas station or change the lease to accommodate the town's requirements. This way, there wouldn't be any disputes and they would likely be given 30 days' notice.

Council Member Bruder asked if Atkins had shared that information with the Mayor. Mayor Fuller clarified that although Atkins had informed them, they were unsure of what would happen, it would be crucial to know what would happen with the gas station. Council Member Bruder said that 30 days' notice was insufficient. Vice Mayor Tricoche proposed 90 days.

Mayor Fuller explained that they do not know what will happen with the grants, and Atkins does not know what the federal government will do with them. If Atkins received something stating that the town must submit proof that there is no lease on the property within a certain number of days, he did not want to have a problem where they overlooked something like that. He stated that he has no intention of terminating the lease. However, he would like to see a right of first refusal for the tenant, as they have been good residents, and if a gas station opens, it should be them.

Council Member D'Amico said that since cutting off the residents' access to gas would be the worst thing that could happen, the town has an obligation to maintain the gas station until a suitable replacement is found. Although she was aware of the issues with grants, the construction won't begin for a few years. She concurred that a new flexible lease with incentives should be discussed; and if they reject it, it will remain a gas station.

Mayor Fuller stated he did not have an issue with below market rent as an incentive for the fact that there would be a shorter-term lease. He spoke about the importance of not losing \$50 Million in grant money for the bridge versus the town having to lose the gas station for a period of a year or two during construction. Council Member D'Amico commented that they were talking about people having to get off the island during emergencies.

Council Member Bruder suggested that a meeting be held with the owner of the gas station regarding what is happening with the bridge to see what he is comfortable with. She also recommended that all Council members attend meetings with Atkins because she found the 30-day notice inconceivable. Mayor Fuller clarified that Atkins did not specify a time frame, only that the town needed to retain as much flexibility as possible, because the town needed to be able to apply for grants when they became available, even though it was unclear how long each grant would take.

Town Manager Lasday read the following into the record from her Manager's Report: The Project Development and Environmental (PF&E) Study for the Broad Causeway Bridge Replacement project will evaluate bridge alternatives that may utilize a new alignment adjacent to the existing bridge over the Intracoastal Waterway. At the existing Chevron Gas Station on Broad Causeway Island, there are buried gas tanks, utilities, communication lines, and foundation elements that may or may not be affected by future construction (both temporary and permanent). Interruptions to service, access, and utilities will be minimized as much as possible with proper planning. She stated that the town is currently working with FDEP, who is cleaning up from the gas station, at their own expense, and there has to be flexibility to do the work that needs to be done.

Council Member Yaffe concurred with Council Member Bruder to have a conversation with the operator of the gas station and move on from there. Vice Mayor Tricoche wanted clarification that the Town Attorney will be draft the lease, not staff.

Town Attorney Geller responded that he would consult with staff if they had something to contribute. It would be a collaborative process between the attorneys, the manager, and any of her staff. If members of the Council had concerns, he would try to take them into account to the extent the other side was willing to do so. He said he and his paralegal will edit the document.

Council Member Bruder suggested the first conversation should be with the owner of the gas station. Mayor Fuller stated that they all want the same thing for the gas station to remain. His concern was making sure there is no interference with the bridge grants as long as there is flexibility for the lease on the gas station. Town Manager Lasday suggested a meeting be held with the owners of the gas station to come up with the business terms to be given to the Town Attorney to draw up the agreement. Mayor Fuller suggested potentially having a workshop with the owner in April or some form of special meeting to have the discussion openly, as they all have to participate. Town Attorney Geller suggested that he be present at the meeting, and that the gas station invite their counsel to be present as well.

The Mayor suggested the council be polled for a meeting in April on this matter. The Town Attorney asked that the item include “Discussion and Possible Action”.

Council Member D’Amico commented on the historical aspect of the gas station to the town and said that she did not want to see the building become an obstacle. She stated that she will assist in advocating to make the building a monument. The Mayor gave assurance that the building would be preserved as he had spoken to Atkins about it. Council Member D’Amico stated she would not recommend spending millions of dollars on something she thought should never be designated, until she starts to see some good examples of how it would be done. She felt the town would have a problem if it lost the gas station for a month.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated the Council was talking about a gas station in the middle of a bridge that would cost millions. She spoke about the condition of the bridge and referred to a 2007 to 2009 and 2017 schedule of projects from a previous Town Manager. She said they were to start presenting an extension bridge or a brand-new bridge in 2017.

Mayor Fuller clarified the February 9th Kick Off Meeting was for the replacement of the bridge. As far as being able to speak at the meeting, Mrs. Neuhut was allowed to speak. Several people from Atkins were there taking questions, and they also asked if she wanted to put anything in writing, they would respond to her in writing as well. He explained there is a set series of programs for how the town has to address the bridge project in order to get grants and to be able to apply, and the town is following those procedures so it can get federal money.

ACTION: Council Member Yaffe made a motion directing the Town Attorney and the Town Manager to proceed with the process to have the meeting with the gas station regarding the lease. Council Member Bruder seconded the motion, and it passed unanimously.

6. Discussion and Possible action regarding zoom meetings.

Council Member Bruder informed the Council she had received many calls from residents regarding Zoom meetings. It was mentioned there was some interruption when the last Zoom meeting was held. The question was asked whether it would pose a problem, if the meeting would have to be postponed, if the town advertised a hybrid meeting and Zoom did not work.

Town Attorney Geller advised, if the meeting was advertised as hybrid, the town would be informing people they are permitted to appear by Zoom, and if it did not work, there will be a problem. Mayor Fuller asked the Town Attorney if there was way to advertise the meeting that Zoom will potentially be available, and to still be in compliant, if it did not happen. Town Attorney Geller advised there is a way but would have to check. He said he believes putting some kind of disclaimer that Zoom was being offered as a convenience, and if for some reason it doesn't work or the technology is not available, the town couldn't guarantee somebody with substantial interest to be heard. Roberto Gonzalez, IT Director, informed the Council they are working on the issues and hope to have them fixed within the next two months. Mayor Tricoche asked staff to make the Zoom meetings happen. Mayor Fuller requested that the Town Attorney provide proposed language to notice Zoom meetings in the next Town Manager's Report.

Council Member D'Amico asked why Town Meetings are not on Cable TV. It was mentioned the Town had a contract with Atlantic Broadband and the services were discontinued. Mayor Fuller recalled that under the original agreement, in order for the company to have a license with the town, they were paying for it, and would broadcast the meetings. Once the franchise agreement ended, the town would have had to pay just to broadcast on Atlantic Broadband. They looked at it and the percentage of people that was using Atlantic Broadband versus the cost the town would have had to incur didn't factor out. Council Member Yaffe added that at one time Atlantic Broadband was more exclusive in the town; now they are not. The question was, if the town was broadcasting on Atlantic Broadband and someone had a different service, they were being cut off. Council Member D'Amico asked if too much emphasis was being put on Zoom being the method of transparency.

Council Member Yaffe suggested the Town Manager contact neighboring municipalities to see how they are broadcasting their meetings.

PUBLIC COMMENT

Dave Sanchez, 1080 94 Street, came forward and suggested use of a free alternative like Jitsi, which is an open-source free software that is easy to use and has lots of features. He stated it is much better for the meetings to be viewed online with more of an ability for people to see them, which is much easier than logging in through Zoom.

Mayor Fuller and Vice Mayor Tricoche advised Mr. Sanchez that the town already streams the meetings online.

Eric Rappaport, 1211 97th Street, came forward and stated that his car was stolen from his driveway and was returned with minimal damage by the police the next day. He expressed concern that car theft had become an issue in the town. He brought to the Council's attention emails that were sent out last year at the end and following the election, which attacked and disparaged the faith-based communities in town.

He stated there was no room for this dialogue in the community and asked the Council to do whatever it can to discourage this type of talk and dialogue within the community. He will provide those emails to the Town Council.

Council Member Bruder responded that the police and staff work well together when there is any kind of threat or anything of that nature. She stated that the idea of what is happening is disgusting to her. She stated that most of the Council Members have been in Bay Harbor Islands a long time, and they seem to be able to get along. She said she believes most people on the Council want to have clean elections. She stated there are two synagogues and a church in the midst and the town as a whole, know how to get along with each other. She believes BHI is a welcoming open community to everybody.

Mayor Fuller informed Mr. Rappaport that the town was aware of some of the new criminal activities. He said he had conversations with the Police Chief and with a few residents, and they are working on the matter. He told Mr. Rappaport the matter is not being overlooked by the Council.

ACTION: Council Member Bruder made a motion for IT to work diligently in getting Zoom as fast as possible, for the Town Manager to keep the Council up to date on when Zoom will become available, that once Zoom becomes available it will be used, and for Town Attorney Geller to provide proposed language, within the next two weeks, on how to notice the Zoom meetings. Vice Mayor Tricoche seconded the motion, and it passed unanimously on a poll vote.

Discussion and Possible action regarding Section 23-12 (15)(e) iii of the Town Code regarding projections into setback areas. Sponsored by Council Member Bruder.

Council Member Bruder raised the issue of a gazebo built within five (5) feet of a home's setback that was brought to her attention by the neighbors. The gazebo was supposed to be completely detached, but it wasn't, and it was also very imposing. She mentioned that the gazebo in question was observed by Council Member Yaffe and Mayor Fuller. She later discovered from the neighbors that the setback was not even five feet. The following day, she and town officials visited the property and were granted access by the owner. When asked how the gazebo was permitted, the neighbor said the Town Planner explained "how to go around it". Council Member Bruder went on to say that the neighbor said the Town Planner had spoken with her attorney when she was questioned about the time involved. She voiced concern that in addition to paying for an in-house planner, the town is also covering the cost of the Town Planner's time spent speaking with developers. She said that's not what the town planner should be doing. She proposed a new ordinance be created to remove these enormous, hideous gazebos.

Council Member Yaffe stated that he saw the structure attached and considered it offensive. He added the gazebo is so close to the neighboring property one could almost reach over the fence and touch it. He said that since more and more people are building gazebos in these properties and they are far too close to the property line, that part of the code needs to be examined. Council Member D'Amico recommended looking at elevations and "line of sight."

Vice Mayor Tricoche acknowledged that there are "holes" in the code and expressed a desire to examine the matter thoroughly. She asked that staff bring up the topic of hiring an in-house town planner for a future agenda item and that the council be notified if any additional staff is required. Drawing on her experience in the field, she recommended Council Member D'Amico examine the matter and provide guidance to the Council.

Council Member D'Amico brought up her previous request that the town examine the Comprehensive Plan and iron out specifics such as this one. She wanted to see where the TDRs are distribute, obtain working plans, and look at the different ways buildings are impacted.

Council Member Bruder brought up the issue of other homes being constructed with cabanas and gazebos that are permitted to extend beyond the five-foot setback and stated that this practice must end. She supported having an in-house planner and disagreed with the town planner for charging the town each time a developer meets with him.

Mayor Fuller stated that what concerns him is that the town has a history of approving a design and the actual structure that gets built does not match the design; then they come back and say it was already built that way. They blame the town because the town sat there and watched it happen. He stated he wanted to ensure the Building Department is literally checking at various stages of the project by going outside with a tape measure.

Council Member Yaffe referred to situations from years ago where the Planning & Zoning Board would approve a structure, and no one would check to see what was actually being built. He stated that the town's personnel need to visit the construction sites periodically with the approved plans to ensure what is being built is what was approved, because once the changes are incorporated into the project, it becomes a bit difficult. He cited an example at 10000 West Broadview Drive where the house was built too high, and the setbacks were off. The town required them to make certain changes, and additional changes had to be made when the property was sold. Once the structure is built and the Certificate of Occupancy is issued, it is difficult to get compliance.

Town Manager Lasday stated that as-builts are now required and the Code Compliance is stricter, but she would like the Building Official to speak on the matter at the next meeting.

Council Member D'Amico stated that one of the projects in the residential area did not have a section, and without a building section through it with all that height, a distinction cannot be made as to how it is represented to the next building. It is required for elevations to be done on either side; the town has to ensure those required drawings are still on there. There are also concerns as to what is being done under the building and how they are filling it.

Council Member Bruder seconded the motion by Vice Mayor Tricoche to hire an in-house Town Planner.

Council Member Bruder then made a motion to remove the ability from the Town Code to build within the setbacks. Council Member D'Amico suggested there be a definition as anchoring it in the ground is usually the point. It was the consensus of the Council that nothing should be built within the 10-foot required setback. Council Member Yaffe seconded the motion.

Town Manager Lasday stated that fences are typically allowed in the setbacks. It was mentioned that fences are to be allowed, but no structures will be allowed in setbacks.

PUBLIC COMMENT

Meline Mizsihi, 3300 97th Street, came forward and stated that she built her house six years ago. She wanted to make a gazebo, and the Building Department was very strict, so she didn't do it in the end. She expressed concern about car theft in the community. She asked why the new parks that are being built in town are open to the public and not just to residents of Bay Harbor Islands.

Mayor Fuller explained that if State money from a grant is used for any portion of the park, the town is required, by law, to allow everybody to use it. He stated that there are plans for a new park with waterfront access, which will be exclusive to Bay Harbor Islands' residents, as funds are not being received from the State for that park.

Council Member Bruder suggested an article be placed in the next newsletter regarding car safety. Mayor Fuller stated that he had spoken with the Police Chief and believed a change would be seen very shortly.

Frances Neuhut, 1060 Kane Concourse, came forward and opposed approval of an ordinance to allow more structures in the setbacks.

PUBLIC COMMENT CLOSED

ACTION: Council Member Bruder made a motion to hire an in-house Town Planner and to remove the ability from the Town Code to build within the setbacks-nothing shall be built within the 10-foot required setback. Council Member Yaffe seconded the motion, and all voted in favor.

Mayor Fuller announced the next Regular Council Meeting for April 11th.

There being no further business to address the meeting adjourned at 9:15 P.M.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS MINUTES OF A REGULAR COUNCIL MEETING

A Regular Meeting of the Town Council was held on Monday, April 10, 2023, at 7:32 p.m. Upon roll call the following members responded:

Mayor Elizabeth Tricoche	
Vice Mayor Joshua Fuller	Council Member Stephanie Bruder
Council Member Molly Diallo	Council Member Teri D'Amico (7:33)
Council Member Salver	Council Member Robert Yaffe

SPECIAL PRESENTATION:

1. Miami-Dade County Public School Board representative and Principal Scott Saperstein will be present at the Council's request to discuss various items regarding Ruth K. Broad.

Principal Scott Saperstein came forward and discussed the accolades of the school. He reported the students have continued to perform extremely well on the FAST assessment, and the school is one of the highest rated in reading and math in the north region. The school has been an A school for the past 22 years since schools have been graded. The Chess Club won some district awards. There are middle school sport programs including golf. There is a collaboration with the Town on the DARE program where 5th Graders are being trained by BHI police officers. There is an upcoming Gun Safety Awareness Program for 8th Graders with police officers (May 23-24). There are many clubs including math, gardening, wellness, and mindfulness, as well as other afterschool clubs.

Mayor Tricoche asked Principal Saperstein which of the areas identified he will be working to improve in the school. Principal Saperstein explained that there is always a need for improvement, especially with the identified lowest 25% of the students who perform lower than others on the assessments. Three reading interventionists are working with the primary grades (kindergarten, first, and second) to make sure they have very strong reading skills. They work with those students who are struggling and have some challenges to provide additional instructions during the day. Based on the FAST assessment, the progress monitoring tool, they dissect and look at skill based on areas where certain students can improve with additional instructions. Before and after school programs are available for those children.

Vice Mayor Fuller expressed concern that the principal failed to notify the Town of the incident with the swastika that was painted into the school and the School Board's failure to act to correct the situation, until the Town intervened. He also mentioned that he was not happy with the response to the inappropriate actions that occurred at the school. As to security, the Vice Mayor stated that he would like to see a better response from the School Board and from the School when the town asks them to address minor items that improves the safety and security of the students. He reminded Principal Saperstein that the Town is under contract with the School Board for an Address Verification System for Ruth K. Broad. The town paid and completed its part of the contract, and the School Board failed to completely comply with its portion of the contract, which has to be addressed as it is a violation of the contract. Plus, it is not the first time the School Board has been in violation.

Council Member Bruder stated that she was disheartened that the Town was not notified about the situation with the swastika, a hate crime that had to be reported. She mentioned issues with teachers working out of the area for years, complaints about the condition of the bathrooms, vaping in school, issues with janitorial service, and the light being out in some of the classrooms. She reminded Mr. Saperstein of the town's partnership with the school and encouraged him to reach out if he needed anything.

Council Member Yaffe mentioned an issue with one of the neighboring residents of the school complaining about a generator that runs early in the morning and goes on and off all day and on weekends. He found it disturbing that it had taken a month of complaining. He expressed concern about the length of time it takes the School Board to address issues at the facility, such as cutting the landscaping and keeping the courts clean and free of water, minor issues, which should be addressed quickly. Town Manager Lasday stated that the police, Code Compliance, and staff have been following up on the generator/chiller issue.

Council Member Salver recalled Shepard Broad attending a Council Meeting and stated he will deed the land behind the elementary school to the School Board. An interlocal agreement was entered into as part of the transaction, which articulated that the space was to become a Bay Harbor Islands recreational facility to be listed in the Comprehensive Plan. He expressed concern that over the years, the School Board had become complacent and deaf to requests the Council receives from their constituents. He commended Principal Saperstein for doing a great job maintaining an A School. He suggested the lighting hours for the tennis court be on from sundown to 9:00 p.m. throughout to be in sync with the field and the basketball court, so the facility is fully available to residents. Council Member Bruder reported that the "Pride Outside" organization matched dollar by dollar to the School Board for the building. An interlocal agreement was entered into for the basketball court, the playground, and the field that the light would be on from sunup to sundown; and the tennis court was separate. The school has control over the lights for the basketball court, specifically for that reason.

Council Member Salver asked the Town Attorney if the Town had carved out autonomy over the timing of the lights and ceded that power to a third-party organization. Town Attorney Geller responded that he would have to review the agreement. He said he recalled it to be a shared use, which implies the Town has some rights of its own.

Council Member Bruder clarified that previously, there was no basketball court with lights. Pride Outside, a private organization, entered into an agreement with the School Board. They raised \$5 Million to upgrade the school, the grass, the field, etc., and gave the money with matching funds from the School Board to build the building, the basketball courts, and everything else. She explained that the school has control of the lights, which was part of the Pride Outside agreement.

Principal Saperstein responded that the school has control of the lights during the week. The lights are handled by the BHI police on weekends, because they have to be manually turned on and off, and the school does not have staff onsite then.

Council Member D'Amico stated that she believes the Town has an interlocal agreement for the tennis court and felt it was very important to have it open until 9:00 p.m. She stated that the Town should get the tennis court, set regulations, and figure out the issue.

Council Member Bruder suggested the use of a timer to address the lighting issue. Principal Saperstein stated that he will issue a Work Order accordingly.

Council Member Salver requested the Town Attorney clarify the way the deal was structured and how an organization through a donation could supersede the request of a municipality that was a direct party to the original interlocal agreement.

Council Member Diallo stated that she visited the area on Saturday, heard the loud noise, and took a video. She mentioned that residents also complained about the bell and the fire alarm going off on weekends.

Council Member Bruder informed Mr. Saperstein that the town needs to be paid the \$15,000 for the school's past due water bills.

Mayor Tricoche informed Principal Saperstein of the partnership between the school and the Town and of the Council's willingness to work with him to address the needs of the school, as they have a vested interest in the school being the best it could be.

Principal Saperstein responded saying that he appreciates the feedback and wanted to work in partnership with the Council. He stated for the record that most of the issues mentioned have to go through the School Board Intergovernmental Affairs section. By rule, he is not to communicate directly with the Council, but he will get intergovernmental more involved.

Principal Saperstein responded to comments raised by the Council. Regarding the swastika, he explained that such matters have to go through the established protocol. As principal his first order was to alert the School Board Officer, which he did immediately. Detectives from the School Board Police did an investigation at the school and the matter was deemed a noncredible threat, which meant there was no threat behind the symbol. He informed the Council he was unable to find a viable candidate for the Address Verification Program. He said because of COVID, it had been difficult to find someone willing to conduct home visits. Once that individual is secured, they will move forward in a stronger manner. He explained that the school has two full-time security monitors and one part-time. As to the safety upgrades, Work Orders have been placed for higher fencing, additional cameras, and various things that will enhance security and safety. He explained that the issue with getting things done is whether they are deemed necessary, as there is a Building Code that the School Board abides by, and sometimes these things do not go beyond the Building Code. Higher fences were not deemed necessary based on the Code. Anybody who is out of area is on a waiver, they are working on their certification in that area and have a timeline to complete courses and are held to that standard.

There are seven full-time and one part-time custodian. They are fully staffed in that area. The temporary chiller is there, but it is down, and they are waiting on the parts.

Council Member Yaffe informed Mr. Saperstein that it is not acceptable in a community for the school to cause that sort of disruption, that type of annoyance, and to be a nuisance to people who live next to the school. Principal Saperstein responded that annoyance is keeping 1,280 students and 150 staff comfortable. Council Member Yaffe stated that the response was inappropriate.

With regards to the bells going off on the weekends, Principal Saperstein stated the bells will be adjusted. At this time, he indicated to the Council that the Vice President of the PTA, Carolina Torres was at the meeting.

Council Member Bruder inquired as to why kids who receive disciplinary action for issues like vaping, who do not live in the area come back to school the following year. Principal Saperstein explained that there is one particular student who is on a transfer. When they are on an official transfer, they are investigated and if there is no wrong doing, the student remains in the school.

Mayor Fuller explained that the issue with the chiller happened at the beginning of the year. Parents were calling him because their kids couldn't sit in the classroom. It was a life safety issue. For the most part, it was ignored by the school and by the School Board. Kids were going home. They were staying home because they couldn't breathe in class; they didn't have air conditioning. He stated that the school is to deal with life safety issues first, and that was a life safety issue. The School Board essentially either ignored it or it wasn't reported back. He stated that when he informed a member of the School Board of the situation, it was news to them that this was happening. He advised Principal Saperstein that those situations have to be addressed. Now, it's at the point where they have been waiting all year. They finally got the chiller after enough kids could barely survive in class. He again mentioned that parents were really calling him nonstop and complaining. He spoke about interfering with the ability of the neighbors to live peacefully. He stated that the problem with the chiller should not be going on for the whole year. If there is an emergency situation where the chiller goes down, considering we live in South Florida and it gets hot very quickly, the chiller has to be repaired quickly, and it cannot be done in a way that is patching it up, so that the neighbors get penalized. Regarding the Principal's comments that the swastika incident was deemed a noncredible threat. He stated that there was a scenario where a swastika was placed in the school. At that point, whether the principal notified the School Board police, he needed to notify the Town's Police Department. It should not be something that stays internally; not to mention it has to be removed. It should not be sitting there. It shouldn't take action by the Council to try and get something done. He stated that if there is any type of hate crime, anything that is a threat like that, it has to be dealt with immediately.

Council Member D'Amico asked how long it took to contact the town after the incident occurred. Vice Mayor Fuller responded that they did not. Mr. Saperstein reiterated the protocol to report the matter to the School Board Officer on campus. Vice Mayor Fuller stated that he was notified by one of the neighboring cities that one of the other kids had seen the swastika in the bathroom. He then notified the town's Police Department, who went to the school. It was still there, and that's when they started the investigation.

Vice Mayor Fuller mentioned that the town pays for the two security officers at the school. Regarding the address verification, he didn't accept the idea that they were still looking for someone years later. If that is the case, they should return the money to the town. Council Member Yaffe stated that the town could assist in finding a resident to take on that activity. He suggested the money be given back to the town.

Council Member Bruder stated that the swastika has not been completely removed. She mentioned that the chiller runs 24 hours a day. Mr. Saperstein stated that it is manually set to go on in the morning and goes off at 6:00 p.m. Town Manager Lasday stated that the chiller will be on nonstop for 24 hours during the next three days. Principal Saperstein explained that some work is being done that would require the chiller to be on during that time. It is not like that on a regular basis, this is a special circumstance. Council Member Bruder advised the principal that the swastika has to be removed.

Mayor Tricoche stated that at the end of the day, there are 1,300 students at the school who are potentially affected by all of these decisions. When there are delays, it's a matter of safety, and there is the thought of potential things that could happen at the school. She stated that if Principal Saperstein is not able to take care of the issues, she would like a School Board representative to attend the Council Meeting with him.

Dr. Gilberto Bonce, Regional Director of Budget & Personnel with Miami-Dade County School Board, was in attendance. Mayor Tricoche asked Dr. Bonce when will the issues be addressed. She wanted information as to a date, who will address the matters, and their commitment to a turnaround time to keep the kids in a healthy and safe environment. She referred to the principal's comment that there are seven custodians and spoke of the poor condition of the bathrooms in the school.

Mayor Tricoche asked Mr. Bonce if he had direct control to commit to the Council a date when the issues would be resolved. He responded that he was not part of the Maintenance Department, but he will ensure what is left of the swastika will be removed by tomorrow. The mayor mentioned ongoing issues like the chiller. Mr. Bonce stated that the contractors told them they were waiting for parts, and he did not know when those parts would arrive. Discussion continued regarding the School Board having the authority to get the chiller parts elsewhere as the children need to have a proper facility, the need for better communication and response from the school and the School Board, the need to have a mutual partnership between the town and the School Board, the school must address issues that need to be fixed, and the concern in not having the swastika removed.

Council Member Bruder offered to have a meeting with the School Board. Dr. Bonce explained that everything addressed by the Council is valid, but he and the principal have no control over the Maintenance Department. He was not aware of the issue of the swastika. Mayor Tricoche asked Dr. Bonce if he would have a response with actionable information, within one week, on all of the items that were brought up. He stated that he will not be able to have a response to the Address Verification Program within a week. He felt the salary should be increased.

Vice Mayor Fuller asked if they were advertising the position only for Bay Harbor Islands; he mentioned that he had spoken to some other municipalities who are in similar contracts with the School Board, and they have not filled the position either. He suggested combining them. Mayor Tricoche clarified the School Board will send the information to the Town Manager within one week, and she will forward it to the Town Council.

PUBLIC COMMENT

Elijah Salver, 1065 97 Street, came forward and asked the council if they would be amenable to having the courts open until 9:00 p.m.

Frances Neuhut, 1060 Kane Concourse, came forward and stated that she was concerned with the parking lot. She wanted the children to be kept busy after school, because she doesn't feel they should be hanging around the stores. She stated that the after-school programs are not working. She expressed concern about the lack of verification of addresses and accountability, over population in the school, and broken lights.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and stated that she has been complaining about the grass in the school and about the melting paint on the tables outside of the cafeteria. She stated that there are flags hanging that can fall on children. She said she contacted the School Board about her concerns and have not received any answers. She disagreed that the school has an A rating. She also stated that kids are not wearing the proper uniform and they are very rude.

PUBLIC COMMENT CLOSED

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Council Member Yaffe requested a future agenda item to discuss zoning issues, two and three-lot developments and other zoning issues on the West Island, possible through a charrette. He would like the management to look at these issues and make some recommendations.

Council Member D'Amico requested items regarding the Town's appeal process and protection for adjacent properties during new construction be added to the next agenda for discussion. She suggested the "Candidate Forum" be scheduled earlier than the week prior to the election.

Council Member Salver requested a future agenda item to provide for one day of Early Voting to make it convenient for more people to vote.

Vice Mayor Fuller requested a Council Retreat be scheduled to discuss zoning issues and other items.

Council Member Diallo requested the Council honor Ruth K. Broad Bay Harbor K-8 Center's Teacher of the Year and Rookie Teacher of the Year during Teacher Appreciation Month in May and that it be established as an annual tradition. It was the consensus of the Council to include this item in the May agenda and that recognition be through the issuance of a proclamation.

TOWN MANAGER'S REPORT:

Town Manager Lasday reported on the following:

- Swearing of new Police Officer Giselle Estopinan tomorrow at 4:00 p.m.
- Bob Cats winning the basketball championship
- French Horn Concert on April 23rd
- April 15th Movie Night, Turning Red
- She thanked staff for a successful egg hunt event

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member D'Amico spoke about her visit to Tallahassee for Miami-Dade County Days and the need to work on the Town's Comprehensive Plan. She invited the residents to reach out to her regarding any issues.

Council Member Yaffe mentioned his visit to Tallahassee and the poor planning of the event. He asked the Town Manager to contact the organizer regarding their plans for next year, as the Council could probably travel on their own and not through Miami-Dade Days. He stated his time there was productive, and he testified before the Senate regarding the new regulation for use of the Financial Interests Form 6. He spoke on the success of the Town's Easter Egg Hunt and thanked the town employees for their participation. He also thanked everybody who voted for him.

Council Member Salver thanked everybody who voted for him. He mentioned he did not go to Tallahassee because of the election and the tax season due to his profession as a CPA. He stated the egg hunt was well organized. He suggested the process for advertising concerts be reevaluated as some of the concerts were not well attended.

Vice Mayor Fuller congratulated Council Members Salver and Yaffe on their reelection and Elizabeth Tricoche on her selection as Mayor. He thanked Council Member Yaffe for his speech before the Senate Committee. He suggested looking into whether the Council could travel on its own to Miami-Dade Days in the future. He reported on his travel with the Town Manager to the National League of Cities Conference in Washington, DC, which was extremely valuable. He further reported he was also there separately lobbying for the town and will continue those efforts. He thanked the staff for the Easter Egg Hunt.

Mayor Tricoche referred to Council Member Yaffe and Vice Mayor Fuller testifying before the Senate Committee and commended them for standing up for the town to ensure there is always someone to run for Town Council; and that there would be no hesitation based on onerous outside requirement that would prevent people from coming and doing service.

Town Manager Lasday pointed out the elected officials also sought approval for the pending grants for the town to replace all the electrical wiring and generator, to replace manholes and ejector pumps, and for the bridges.

PUBLIC COMMENT

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Deputy Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Frances Neuhut, 1060 Kane Concourse, came forward and complained about the parking problems in the Business District.

Council Member Yaffe noted the *Miami Herald* did not publish any information about the Town's April 4th General Election's results.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and suggested Kane Concourse be beautified for Spring. She also complained about the need for improved landscaping and of landscapers throwing grass clippings into the bay.

Bridget Morin, Town's Director of Communications & Causeway Programs, came forward and informed the Council the Spring banners have been ordered.

COMMITTEE REPORTS:

There were no committee reports.

CONSENT AGENDA: Set for approximately 7:55 p.m. (*Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.*)

2. Approval of the following Council Meeting Minutes:
 1. January 11, 2023 Regular Meeting
3. **Consideration and Approval** of a Resolution ratifying the appointment of Christopher Benjamin as Special Magistrate to conduct Administrative Hearings on Code Violations for the Town of Bay Harbor Islands, pursuant to Section 5¾-3 of the Town Code.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, RATIFYING THE APPOINTMENT OF CHRISTOPHER BENJAMIN, ESQ. OF INTERNATIONAL LAW PARTNERS, LLP AS SPECIAL MAGISTRATE TO CONDUCT ADMINISTRATIVE HEARINGS ON CODE VIOLATIONS FOR THE TOWN OF BAY HARBOR ISLANDS, PURSUANT TO ENFORCEMENT PROCEDURES SET FORTH IN SECTION 5 ¾-3 OF THE TOWN CODE, PROVIDING FOR INCORPORATION OF RECITALS AND SETTING AN EFFECTIVE DATE.

4. **Consideration and Approval** to issue a Request for Proposals (RFP) to hire a company to plan and implement concerts for the town. The service will include booking talent, staging, and providing sound and lighting.
5. **Consideration and Approval** to issue a Request for Proposals (RFP) for continued fixed route Shuttle Transit Services for the Town of Bay Harbor Islands.
6. **Consideration and Approval** to issue a Request for Proposals (RFP) for structural repairs to the Indian Creek Bridge.
7. **Ratification of Approval** of the emergency purchase of traffic cameras for the SunPass under the Emergency Procurements' regulation, pursuant to Section 2.1.3(a) of the Town Code.

ACTION: Council Member Yaffe made a motion to approve the Consent Agenda. Council Member Diallo seconded the motion, and it passed 6-0 on a poll vote. Council Member Bruder was absent from the dais.

8. **Consideration and Approval** of an Ordinance on Second Reading amending Sections 18-1 through 18- 4 of the Town Code delegating the authority for issuance of Permits for work in the Public Right-of-Way from the Town Clerk to the Town Manager.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 18, ARTICLE 1 OF THE TOWN CODE ENTITLED “STREETS AND SIDEWALKS”, REVISING SECTIONS 18-1 THROUGH 18-4 PERTAINING TO THE ISSUANCE OF PERMITS FOR WORK WITHIN THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICT AND REPEALER; AND AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked who will monitor the regulations. She complained about Church by the Sea taking away rights-of-way and having an illegal stairwell in the right-of-way. She also commented on houses being built with five-foot setbacks.

PUBLIC COMMENT CLOSED

Council Member D'Amico requested the plans for Church by the Sea where they elected to go from the surface to above and install flood gates.

ACTION: Vice Mayor Fuller made a motion to approve the ordinance on Second Reading with an amendment to replace the word "village" with "town." Council Member D'Amico seconded the motion, and it passed unanimously on a poll vote.

9. **Consideration and Approval** of an ordinance on Second Reading amending Chapter 5, Section 5- 23.01(f) of the Town Code pertaining to meetings of the Design Review Board. Sponsored by Council Member Bruder.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING CHAPTER 5 OF THE TOWN CODE, ENTITLED "DESIGN REVIEW BOARD", BY REVISING SECTION 5-23.01(f) PERTAINING TO MEETINGS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Attorney Geller informed the Council that pursuant to some comments that were made at the last meeting by then Mayor Fuller, some minor revisions were made to clarify that the meeting will be on a specific night, unless it needs to be changed. Any item that begins before 11:00 p.m. shall proceed until there is a vote of the Design Review Board. Mayor Fuller pointed out the addition of "no regularly scheduled meetings" in the second whereas clause. He also suggested Board Members and speakers be included in the decorum language.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and questioned the responsibility of the Design Review Board.

PUBLIC COMMENT CLOSED

Council Member D'Amico suggested a Mission/Vision Statement be created for the Design Review Board.

ACTION: Council Member Diallo made a motion to approve the ordinance on Second Reading. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

Council Member Yaffe requested the tally of votes be included with ordinances on Second Reading going forward.

ORDINANCES ON FIRST READING:

10. **Consideration and Approval** of an ordinance on First Reading amending Chapter 5, Article II of the Town Code, creating a new section to be numbered 5-30 entitled "Additional requirements and procedures for site development approvals."

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, MIAMI-DADE COUNTY, FLORIDA; AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO SUPPLEMENTAL PROCEDURES TO IMPROVE THE SITE DEVELOPMENT PLAN APPROVAL PROCESS; AMENDING CHAPTER 5, ARTICLE II ENTITLED DESIGN REVIEW BOARD BY CREATING A NEW SECTION 5-30 ENTITLED "ADDITIONAL REQUIREMENTS AND PROCEDURES FOR SITE DEVELOPMENT PLAN APPROVALS," INCLUDING PROCEDURAL REQUIREMENTS AND SUPPLEMENTAL REGULATIONS; PROVIDING FOR INCORPORATION OF RECITALS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Council Member Yaffe moved the item to the floor and Council Member D'Amico seconded the motion.

Town Planner Fernando Leiva came forward and explained the proposed ordinance outlining the process for new Site Development Plans, including pre-application review, public notification letter, and a Community Meeting.

Council Member Salver commended Town Planner Leiva on the preparation of the ordinance.

PUBLIC COMMENT

Matt Amster, Bercow Radell Fernandez Larkin & Tapanes, 200 S. Biscayne Boulevard, Miami, Florida 33131, came forward and stated he supports the pre-application process. He suggested clarification be made regarding the Notification Letter, if it is to be sent before the actual "Notice of Hearing", who will prepare it, when it would be sent, combining Sections "a" and "b", including the applicant and what is being requested, if there will be the option for virtual meetings, and changing "cost recovery" to "all cost incurred by the town".

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion to approve the ordinance on second reading. Council Member Diallo seconded the motion, and it passed unanimously on a poll vote.

Council Member Yaffe inquired of Chief Building Official Mike Mesa as to what point in the construction would temporary fences have to be removed and the property sodded. He expressed concern that temporary fences remain for unreasonable periods of time without any activity on the property. Chief Building Official Mesa stated that it will be at the time of demolition.

11. **Consideration** and **Approval** of an ordinance on First Reading Discussion amending Sections 23-1, 23-4, and 23-5 of the Town Code to regulate the location of Real Estate Sales Centers in the town.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO REAL ESTATE DEVELOPMENT SALES AND MODEL CENTERS; AMENDING CHAPTER 23 ENTITLED ZONING AND PLANNING; AMENDING ARTICLE 1 ENTITLED ZONING REGULATIONS; AMENDING SECTION 23-1 ENTITLED DEFINITIONS; AMENDING SECTION 23-4 ENTITLED USE REGULATIONS RM-1 AND RM-2 MULTIPLE FAMILY DISTRICTS; AMENDING SECTION 23-5 ENTITLED USE REGULATIONS B-1 BUSINESS DISTRICT; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND REPEALER; AND PROVIDING AN EFFECTIVE DATE.

Mayor Fuller moved the item to the floor, and it died for lack of a second.

12. **Consideration** and **Approval** of an ordinance on First Reading amending Chapter 23, Article 1 - Zoning Regulations, modifying certain provisions relating to buildings and structures projecting into the side and rear yard setbacks of interior and waterfront lots on the West Island; to ensure a consistent and harmonious development pattern townwide.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; AMENDING CHAPTER 23, ARTICLE I, SECTION 23-12 OF THE TOWN'S CODE OF ORDINANCES, ENTITLED "GENERAL PROVISIONS," TO MODIFY PROVISIONS 23-12(15)(a)iii AND 23-12(15)(e)iii RELATED TO BUILDINGS AND STRUCTURES PROJECTING INTO THE SIDE AND REAR SETBACK YARDS OF INTERIOR AND WATERFRONT LOTS ON THE WEST ISLAND; PROVIDING FOR ADOPTION OF RECITALS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Council Member Bruder moved the item to the floor and Council Member Yaffe seconded the motion.

Council Member Bruder spoke about the ramifications of allowing buildings to be built in the setbacks and wanted to ensure there isn't a reoccurrence. She suggested that no structures be allowed in the side and rear setbacks at all. Town Planner Leiva explained the ordinance. Mayor Fuller asked the Town Attorney about the appropriateness of further revising the ordinance to include front setbacks. Town Attorney Geller advised there was no issue with amending the ordinance on first reading to include the front setbacks. Council Member D'Amico reminded the council that they have discretion to approve structures in the setbacks. Council Member Yaffe requested the height of gazebos be looked at regarding a limitation. Council Member D'Amico asked that the ordinance be looked at further. Mayor Fuller felt the language "architectural features" was conflicting and should be removed. It was the consensus of the Council that the ordinance be further amended to remove "architectural features" and that the language states fences and eaves be allowed according to the Code.

PUBLIC COMMENT

Frances Neuht, 1060 Kane Concourse, came forward and commented on lack of regulations for gazebos as they are built tall, lack of enforcement, and requested the driveway and garage regulations be reviewed.

PUBLIC COMMENT CLOSED

ACTION: Council Member Bruder made a motion to approve the ordinance on First Reading as amended to remove "architectural features" and include fences and eaves are allowed according to Code. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

DEFERRED ITEMS:

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

13. **Consideration and Approval** of a request to purchase a vehicle in the total amount of \$58,355 or lease the vehicle for \$13,108/year for 5 years at a total cost of \$65,580.00 for Public Works Water Division from Bancorp utilizing the "Piggyback Provision pursuant to Section 2.1-2 of the Town Code" from the State Contract pricing from the City of Tallahassee.

Town Manager Lasday informed the Council she had provided information on the options to lease and purchase the vehicle. If it were purchased, a budget amendment would be required. The funds are available in the budget for the lease option.

ACTION: Council Member Bruder made a motion to approve the lease option for the vehicle. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

DISCUSSION ITEMS:

14. Discussion regarding the creation of Council Members' Expense Accounts. Sponsored by Council Member Stephanie Bruder.

Council Member Bruder explained to the Council that each Council Member should be given an expense account with a set amount, and when the funds are used in their entirety, they should come to the Council to request more, if needed. Council Member Yaffe stated that in the past, the council was required to obtain approval before traveling. Council Member Bruder said she feels there is a need for more transparency in what the Council does and what they spend funds on. Council Member Yaffe explained that the Council has been traveling more and thus far it is benefiting the Town. Vice Mayor Fuller said he didn't feel this rule would work, because if he needed to go to a meeting that came up and had to wait two months for Council's approval, the Town would miss out on the possibility of receiving grants for failure of going to the conference/meeting. He suggested the Town Manager approve these requests instead. Council Member Bruder disagreed and stated that each Council Member must be accountable for their spending. Council Member Salver asked Council Member Bruder to provide an example of the lack of transparency. Council Member Bruder responded that she's unaware of when certain Council Members travel for different meetings. She stated that she understands the need for travelling, but a lot of the time no one is aware of the travel. Town Manager Lasday advised that the budgeted amount for traveling expenses was \$20,000 for the fiscal year and \$16,000 has already been spent; and the numbers do not reflect travel to the Florida League of Cities, which will now bring the account over budget. Council Member Salver stated that \$20,000 for the fiscal year was a modest amount. Council Member Yaffe suggested the Council announce at the council meetings when they will be traveling.

Mayor Tricoche stated that the Council should be more fiscally responsible with their travel expenses and suggested parameters be added. Council Member Salver disagreed. Council Member D'Amico suggested that only certain members should travel for specific meetings because, as an example, she traveled to the Florida League of Cities conference in Orlando but was not allowed to participate in various meetings within the conference, since she was not a committee member.

Council Member Bruder explained her intention to know where a council member is going and what he/she is doing, if they were spending the Town's money on travel.

Mayor Fuller explained that hotel rates and airfares are raised very high during sessions in Tallahassee. He stated that when he travels for meetings, he reports at the monthly Council Meetings what meetings he attended, the location, and provides information. He stated that he usually travels the day before the conference and returns immediately after.

Council Member Bruder withdrew the item.

15. Discussion and possible action regarding the future of the Town Hall. Sponsored by Council Member Bruder.

Council Member Bruder asked the Council to provide a directive regarding the Town Hall, whether to demolish or let it remain as a monument. Council Member Yaffe asked if any studies have been conducted on the viability of the building, whether it can be refurbished or saved.

Public Works Director Jason Atkinson came forward and explained that there are many aspects of the building, electrical, mechanical, etc. He stated that a detailed analysis was included in the Town Manager's Report and there are not many other new findings, other than what is already there. He stated that the building is structurally sound. However, there are seams with water intrusion in some areas, there are areas underneath the building that have no vapor barrier, and there are areas with poor structural soil. Town Engineer Carrero-Santana stated that the structure is not functionally adequate for what is being done now. And the building is not at the correct floor flood elevation required by FEMA. He said he believes the life of the building has been achieved and suggested getting rid of the building in order for Town Hall to function as it should.

Council Member Bruder agreed with the reasoning that the life span of the building had been met.

Public Works Director Atkinson advised that there are multiple issues; if they fix one issue, then they will have to fix the others.

Council Member D'Amico expressed concern that a massing study on the building had not been performed and requested such a study be done before deciding on demolishing Town Hall. She expressed her frustration for staff not being able to find the boundary survey and plans of Town Hall. Town Manager Lasday responded that staff has been looking for the plans, but they don't exist.

Town Manager Lasday asked for directions from the Council on how to proceed. The Council continued discussion as to the boundary survey and the plans.

Vice Mayor Fuller stated that he didn't think there was an issue with obtaining a survey. He said there are multiple projects sitting in the same area, a parking garage, Block 11, and changing Town Hall. He suggested hiring an outside architect to provide a general sketch so the Council can figure out how they want to move forward, what they want to spend, and decide whether to seek grant funding for part of it. Town Manager Lasday concurred. She informed the Council that staff is in the process of finalizing the RFP for architects/engineers so they can assist in the next step, but definitive direction is needed.

Council Member Yaffe made a motion to demolish the building and Council Member Bruder seconded the motion. Council Member D'Amico requested a boundary survey be done. Council Member Yaffe amended the motion to include obtaining a boundary survey and Council Member Bruder seconded the amended motion.

Council Member Salver asked if the demolition would include just the Town Hall portion and/or the water tank, and if the Town had sought a second opinion for inspection of the property. Town Attorney Geller cautioned the Council that when hiring architects and engineers the Town must comply with the Competitive Negotiation Act.

ACTION: Council Member Yaffe made a motion to demolish Town Hall and to have a boundary survey done. Council Member Bruder seconded the motion, and it passed 6-1 on a poll vote with Council Member Salver opposing.

16. **Discussion** and **Possible** action regarding the 2023 Evaluation and Appraisal Report and related amendments to the Comprehensive Plan.

Town Planner Leiva reported that the Town's Comprehensive Plan (Plan) was adopted in 1988 and was found in compliance by the Department of Economic Opportunity (DEO). Some updates were performed to the Future Land Use and Coastal Land Use Elements of the Plan in 2004, but nothing has been done since. The DEO advised that updates to the Plan are prohibited, unless an Evaluation and Appraisal Report (a report of future and current conditions report) is performed. He asked the Council to entertain a motion to direct staff to initiate the Comprehensive Plan updates and to hold a Comprehensive Plan Workshop.

ACTION: Council Member D'Amico made a motion directing staff to proceed to update the Comprehensive Plan and to schedule a Comprehensive Plan Workshop. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

Mayor Tricoche asked that the workshop be scheduled as soon as possible. Vice Mayor Fuller reminded the Council of legislation that could conflict with the Comprehensive Plan.

17. **Consideration** and **Approval** of a request by Miami-Dade County League of Cities to designate a director and an alternate director to serve on the Board of Directors for a period of one year.

ACTION: Council Member Salver made a motion to nominate Council Member Yaffe as director and Council Member Molly Diallo as an alternate director. Vice Mayor Fuller seconded the motion and it passed unanimously.

ADJOURNMENT:

There being no further business to discuss the meeting adjourned at 10:50 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A SPECIAL COUNCIL MEETING**

A Special Meeting of the Town Council was held on Monday, May 1, 2023, at 6:40 p.m. Upon roll call the following members responded:

Mayor Elizabeth Tricoche
Vice Mayor Joshua Fuller Council Member Stephanie Bruder
Council Member Teri D'Amico Council Member Molly Diallo
Council Member Robert Yaffe

Council Member Isaac Salver

1. **Announcement to the public and advice to the Council that the Council's Attorneys desire advice concerning the below matter, and accordingly, a closed Executive Session is scheduled for Thursday, May 4, 2023, at 6:30 p.m. for the purpose of discussing settlement negotiation, strategy, cost of litigation and expenditures in the following case:**

Charge of Discrimination No. EEOC 510-2020-03421 filed with the Equal Employment Opportunity Commission and settlement offer provided by the Claimant.

Town Manager Lasday read the item into the record.

Mayor Tricoche moved the item to the floor, and Council Member Bruder seconded the motion.

Town Attorney Geller announced that the Council was present in accordance with FS 286.011(8)(a). He advised that Section 8 provides for certain exemptions from the provisions of the Government in the Sunshine Law about public meetings, which is applicable when there is pending litigation, either in a court or in an administrative proceeding. In this case, there is the EEOC proceeding that was read, which is still pending. He explained that the Council is permitted to have an Executive Session; only the members of the Administrative Board (the Council), the Chief Operating Officer (the Town Manager), and the attorneys. Scott Alexander from Johnson Anselmo, P.A., the Florida League of Cities counsel, who principally has been handling the case will also be present.

The Town Attorney continued to explain one of the provisions of FS for the entities attorney to advise the entity, at a public meeting, that he/she desires advice concerning the litigation, which is the case here. He advised that he and Mr. Alexander are in pursuit of settlement of the EEOC charge and would like to have the opportunity to meet privately with the Council in an Executive Session. He mentioned the restriction for the Council to meet in a public meeting.

He explained that the Council will begin a Special Meeting on Thursday at 6:30 p.m. which is scheduled for one hour. They will meet in public on the record and then adjourn to the Executive Session. A Court Reporter will be at the session and will take verbatim transcript of the meeting of everything said by each person. After the session, the Council will go back to adjourn the Special Council Meeting. At approximately 7:30 p.m., they will begin a different Executive Session, with different rules, with labor counsel to talk about pending labor negotiations. This meeting does not have to start in a special meeting.

Town Attorney Geller further advised that once the case is resolved, the transcript will become public. A vote will not be taken at the meeting, because it is only to give advice, to find if there is consent. Settlement will have to be voted on at a regular public meeting. If a settlement can be reached with the claimant, the matter can be placed on the May 10, 2023 Regular Council Meeting Agenda, unless it's found it is not possible to settle.

Vice Mayor Fuller added the Court Reporter takes the transcript that does not get unsealed until after settlement or the end of the case. He asked if the session is to be transcribed at the town's cost, or if it is done once somebody makes a Public Records Request with them paying for the transcribing. Town Attorney Geller responded that the transcript is required to be transcribed at the town's request and cost and must be maintained under seal and not be distributed to anybody, except the attorneys; until the case was resolved.

Council Member Bruder mentioned the first Executive Session that occurred a long time ago, in the same matter, was transcribed and given to the Town Clerk. She asked if this would make the transcript a public record, since it had been read and given to the Town Clerk and Assistant Town clerk. Town Attorney Geller opined that the document is not a public record. It is to be protected and should be kept under seal. Anything that was given should be given back to the attorneys to be kept under seal, until such time as the case is resolved.

Mayor Tricoche asked what the solution was. Town Attorney Geller advised that the document is not a public record until the case is resolved. Therefore, it should not be distributed. Anybody who has a copy should be asked to send it back to the Town Attorney or to Scott Alexander for it to be held under seal, as it was done contrary to law.

Vice Mayor Fuller stated that the request has to be made for the return of the transcript. In a normal lawsuit, if something is accidentally disclosed and then discovered, you are required to make a request for the return of it. Even if they do not return it, in the end it goes toward inadmissibility and everything else later on.

He suggested that in order to protect the town, a formal request should be made, regardless of what is done in the end. If former Town Clerk Marlene Marante received the transcript, she should be asked who she gave it to and also find out if there are any other copies floating around.

Mayor Tricoche suggested the town's IT Department search the system to see if the transcript was downloaded or forwarded to anybody else. Town Manager Lasday will check with IT.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked about the specificity of the Case Number, EEOC 510-2020-03421 that has a 2020 year. Vice Mayor Fuller explained that a case number is assigned when anybody files a case with EEOC; 2020 represents the year the document was filed.

There being no further business the meeting adjourned at 6:56 p.m.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR COUNCIL MEETING

A Regular Meeting of the Town Council was held on Wednesday, May 10, 2023, at 7:04 p.m.
Upon roll call the following members responded:

Mayor Elizabeth Tricoche

Vice Mayor Joshua Fuller
Council Member Teri D'Amico
Council Member Isaac Salver

Council Member Stephanie Bruder
Council Member Molly Diallo
Council Member Robert Yaffe

SPECIAL PRESENTATION:

Mayor Tricoche announced the Ruth K. Broad Bobcat Basket Ball team won the championship.

1. Teacher of the Year - Ruth K. Broad K-8 Center - Wanda McKinney

Ms. McKenny was recognized as Teacher of the Year.

2. Rookie Teacher of the Year - Ruth K. Broad K-8 Center - Marisol Sandoval

Ms. Sandoval was recognized as Rookie Teacher of the Year.

Retiring teachers Mercedes Garcia, Karen Berezdevin, and Alvarez Area were not present, but were recognized for their service.

Assistant Principal Lisa Profeta commended the teachers for their outstanding service.

Council Member Molly Diallo was recognized for over 25 years of dedicated service to the Miami-Dade County Public Schools

3. Introduction of New Police Officer Giselle Estopinan

Officer Estopinan was introduced as a new officer with Bay Harbor Islands.

4. Report on the Town's Investment Performance by Gerardo Rodriguez of BNY Mellon Wealth Management.

Mr. Rodriguez presented the 2023 First Quarter Review of the town's Investment Portfolio. He reported that the market value for the combined three accounts at the end of March was \$6,608,297, with an estimated annual income of \$164,884. The average yield for the relationship was 2.51% versus the benchmark of 2.64%. The benchmark to maturity for the portfolio was 4.07% versus 4.52% for the benchmark and the average duration of the portfolio is 3.69 years versus 3.85 years for benchmark. The First Quarter and Year to Date Returns for the portfolio were 2.35% for the Contingency Fund, 2.36% for the General Fund, and 2.37% for the Water Fund compared to the benchmark of 2.32%.

The Year-to-Date Return is the same since it is only the First Quarter with 2.35% for the Contingency Fund, 2.36% for the General Fund, and 2.37% for the Water Fund compared to 2.32% for the index. The annualized return since inception has been 3.7% for the Contingency Fund, 3.73% for the General Fund, and 3.78% for the Water Fund compared to 3.84% for the index.

At this time, Fabian Fasabe, Florida Representative, came forward and thanked the Council and the Town Manager for a continued partnership and guidance that allowed the grant approvals for the Town. He spoke on Gun safety, the abortion Bill, school Bills issues and encouraged the community to continue to work together. He noted that \$200 million was allocated for Waste Water Management and would like to continue to work with the Town to allocate some of those resources for the Town. He encouraged the Town to continue voicing their concerns, so that he may continue advocating for the Town and its needs.

Council Member Bruder spoke about the importance of mental health awareness and asked Representative Fasabe if he can assist with locating funding. He explained that funds are available, but the Town will need to create the request in order for him to follow the process to tap into those resources.

Council Member D'Amico asked about the building referendum. She raised a concern to the height restrictions. Representative Fasabe responded that he did not sit on the hearing, however, he felt that it may have passed. He encouraged the Council in the next coming months to continue bringing these issues to light, so that he could continue advocating for the Town. Vice Mayor Fuller and Council Member Yaffe thanked him for assistance and accessibility when the Council visited his office, and for the funding to the Town.

Mayor Tricoche recognized Surfside Mayor Shlomo Danzinger and thanked him for attending the meeting.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Vice Mayor Fuller pulled Items 6A and 6B from the Consent Agenda and requested Item 29 be moved up on the agenda.

TOWN MANAGER'S REPORT:

Town Manager Lasday reported on the following:

- Boring work in the middle of the bay associated with the Broad Causeway project, from Monday until June 2nd between 8:00 a.m. and 6:00 p.m.
- Thanked the Town Clerk and Deputy Town Clerk for their efforts in recognition of Clerk's Week

- Asked that thanks be extended to Public Works employees who have been working diligently, with Public Works Week coming up the week of May 21^s
- Advised the Council the school responded to their comments, which were provided in the Manager's Report. She asked the Council to provide any responses to her, so she can relate them to the school
- She informed the Council that Council Member Diallo requested to possibly reschedule the June Council Meeting

Vice Mayor Fuller stated that he wanted to ensure noise from the boring work will not affect the school, as the students will be going through standardized testing. Staff will find out the dates of the testing period, and Town Engineer Rodney Santana-Carrero will monitor the work to ensure there is no disruption to the school during this time.

Town Manager Lasday continued to report that staff was getting ready to send out the literature for the art festival, and she wanted to confirm the event location on Kane Concourse, the setup time for Friday morning, and a Council Member designee on the committee. Council Member Bruder suggested setting up the event for Friday after work. Vice Mayor Fuller explained that it was not possible to do so by having to set up the security barriers between the artists, the security, the fencing, etc. He stated that it has to be earlier in the day. Mayor Tricoche suggested having the event on a three-day weekend when there is no school on that Friday. Vice Mayor Fuller stated that the date was picked because of its availability on the calendar not to compete with other art festivals, the weather condition, artists, and availability in Miami-Dade County so there is no problem. Council Member Salver reported that he had received numerous complaints from residents after the street was closed on Friday for the art festival. He stated that the town has a significant Orthodox Jewish community who relies heavily on doing errands before the Sabbath begins, before sundown. He said he was not in favor of having Kane Concourse closed off during Friday afternoon.

Discussion continued regarding other locations for the art festival. Council Member Yaffe stated that it could be on 97th Street, if that were feasible, since it would be easier in terms of traffic.

Vice Mayor Fuller explained that the area was looked at closely, and emergency vehicles, emergency access, and the traffic getting around were considered. He explained that the event is near where the children area is protected. It has to be on the side of the street where the parking garage is, so people do not have to cross; plus, they have to be able to guard the art at night, since it's an overnight event and things have to be fenced off.

It was the consensus of the Town Council to hold the event on Kane Concourse.

Discussion ensued regarding getting the neighboring communities to assist so the traffic can flow better, for the Chief to speak to Bal Harbor and Surfside regarding the traffic flow, for staff to contact FDOT to see how the traffic light could flow better, and for staff to do a better job of notifying and advertising to citizens way ahead of time, so they can prepare themselves. It was noted that Surfside and Bal Harbor are open to working with the town this time. It was suggested for staff to reach out to the Shul, so they can inform their congregation of the event to help mitigate some of the concerns and for staff to send out a series of advertisements regarding the event and the closure of the street. It was mentioned that Surfside and Bal Harbor promise to work with the town more effectively to ensure that traffic goes through.

Derek Hodes, Momentum Marketing Group, 1031 Ives Dairy Road, came forward and acknowledged that there are challenges with the event based on all of the things that have to happen and the goal and design of the event. He stated that there were 40-50 artists last year, plus food and beverage, stage, fencing, bathroom, bathroom suites, sponsors, and entertainment. He said there are a number of things that has to be coordinated on a time schedule. He informed the Council that his goal is to have 80 artists. He advised that while it may seem a better time to start the event at 3:00 p.m., there will be challenges if it is Sabbath, as people are going to be walking to Shul back and forth. The road will be a disaster, and it will be less safe. The biggest inconvenience is the road shutting down. It is not the set up; once the road is shut down, they are very quick in moving through that process. Artists will not set up in the morning; it does take the day. He stated that based on experience in working events for over 20 years, there is also Friday afternoon rush hour, which will be a challenge either way. He stated that getting the audience used to what is going to happen will also solve some of the problems. He mentioned that there will be some challenges in 2024, communication, more notice, and more cooperation will be needed. He said the Bal Harbor parking lot is now open, which should be a bonus.

It was the consensus of the Council for Vice Mayor Fuller to be the Council Representative on the Art Festival Committee.

Town Manager Lasday reported the Town received a check for \$76,000 from Surfside for its participation during the Surfside collapse. Mayor Tricoche thanked all the staff for their work during the Surfside collapse.

Mayor Tricoche referred to an email received by the Town Manager from the School Board advising that all communication regarding the school should go through the governmental representative within the School Board to address any concerns in the future, not Principal Saperstein. Mayor Tricoche spoke about the School Representative attending a Council Meeting. Town Attorney Geller suggested the Council name one of its members to speak on behalf of the Council, to get on the School Board's Agenda and present directly to the policy makers.

ACTION: Council Member Yaffe made a motion to appoint Council Member Bruder as the Town Council's representative to address the School Board on behalf of the Town. Vice Mayor Fuller seconded the motion, and all voted in favor.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Bruder asked about the status of Zoom conference for the Council Meetings. Mayor Tricoche advised that an item will be on the June Regular Council Meeting Agenda to address the matter. There was a full report in the Town Manager's Report on the solutions put forth forward, with different options. Council Member Bruder advised the Council she will be placing an item on the agenda to provide swim safety for children, possibly partnering with a hotel within the town for the children of the town to use their facilities. Vice Mayor Fuller mentioned the town's agreement with Miami Shores and suggested working something out to potentially bus kids over, if the program can be set up. Council Member Bruder stated that she was referring to little kids with parents. Council Member D'Amico volunteered to lead the program. She also suggested setting up a CPA class for everybody. Council Member Bruder stated that a lot of the pools in the buildings do not have a safety gate around them and suggested something be done. Vice Mayor Fuller suggested contacting Beth Moshe regarding the possibility of using their pool.

Council Member D'Amico encouraged the residents to attend the concert by Sammy Figueroa on Sunday, May 20th. She stated that she has been keeping up with the State legislature and trying to figure out what issues are going to affect Bay Harbor Islands, particularly with the Comprehensive Plan.

Council Member Diallo reported she contacted Miami Shores, and they offer water safety classes for children 2-3 months to three years. She also shared that she attended Congresswoman Wilson's event where the Congresswoman highlighted the 5,000 Role Models and where she met the Secretary of education.

Council Member Yaffe reported on plans to attend the Miami-Dade County Florida League of Cities meeting tomorrow where they will swear in the Board of Directors. He also informed the Council he was notified by the Florida League of Cities that he is a recipient of the Home Rule Hero Award. He stated that this recognition was in response to the Council's advocacy in going to Tallahassee and Washington, DC and elsewhere with the FLC to advocate not only for money for the town, but for legislation. He added it is a reflection of how hard the Council work on behalf of the town, traveling and advocating on behalf of the town.

Council Member Salver reported he attended a Children's Trust (Trust) Budget Committee Meeting. Their budget for the coming year is about \$180,000,000, most of which is invested in our children's future. They discussed reading and the Thrive by Five programs. The drive is to get kids to read by age five.

He mentioned grant funding to the town from the Children's Trust for the afterschool program that is sponsored by the Trust. He also informed the Council that he received an email from Esther Fortune, a music teacher, who requested to use the park space on 95th Street and West Bay Harbor Drive for a recital for her students, a lot of whom reside in Bay Harbor Islands and surrounding cities. He encouraged the Council to allow the use of the park, if permissible, for music events, especially for the kids of Bay Harbor Islands.

Council Member Bruder thanked Town Manager Lasday, Assistant Town Manager Rosado, and Joel Jacobi for their diligent work on getting the Children's Trust program to the town. Vice Mayor Fuller also thanked the staff.

Vice Mayor Fuller reported he also received a notification that he is a recipient of the Home Rule Hero Award. He spoke of the significance of advocating the importance of home rule in Tallahassee, and his intention to continue advocating for the town. He stated that he attended the last concert held by the Town, which was a successful event. He also attended the last Miami-Dade County League of Cities meeting, and County Commissioner Steinberg's event dealing with environmental issues regarding Biscayne Bay.

Mayor Trichoche asked that baby CPR be included in the CPR trainings. She also thanked the Council and Staff for their efforts and work for the town. She offered the other Council Members the opportunity to provide a message in the Town's newsletter, rather than writing the messages each month.

PUBLIC COMMENT

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Frances Neuhut, 1060 Kane Concourse, came forward and spoke about religious institution requiring public hearing before the Town Council, disappearance of municipal parking spaces, preexisting businesses and restaurants being imposed with substantial burden and being forgotten, instead tax exempted entities being given priority, the Council, the Local Planning Agency, not balanced and respected with the Town's Land Use Regulations with preserving and maintaining the high quality, standard, and aesthetic beauty, the Council approving nonconforming uses such as Sales Centers for new development project, no mass transit, and building of Church by the Sea. She also raised concern on the lack of municipal parking, the Business District being used for Sales Centers, and the relocation of Church by the Sea to the town.

Ann Marie Kelly Stoppa, 906 S. Walbash, Chicago, Illinois, came forward and stated the Council needs to get more involved in the large corporations that come to Bay Harbor Islands that are not necessarily interested in the benefits they bring or could bring to residents. She spoke about her experience of being asked to leave a building that was sold and found another building that was in worse shape. She requested the Code of Ordinances be reviewed and the requirements that are not being adhered to stiffened, as developers are being given too much leeway.

COMMITTEE REPORTS:

5. ~~Report from the Parks and Recreation Committee regarding their April 19, 2023 meeting.~~

CONSENT AGENDA: Set for approximately 7:55 p.m. *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

7. **Consideration and Approval** of a proposal from BCC Engineering to provide structural services for project BC-162 Waterway Bridge for repairs of Bridge No. 875102 for a lump sum fee of \$143,040.
8. **Consideration and Approval** to expend allocated funds of \$24,018.72 to Lou's Police Distributors, Inc. for the Police Department Firearms Replacement Program, under the piggyback provision pursuant to Section 2.1.2. of the Town Code.
9. **Consideration and Approval** of the 2023/2024 Budget Preparation Calendar. Enclosed is the proposed schedule provided by the Town Manager.
10. **Consideration and Approval** of a request to issue a Request for Proposals (RFP) for replacement of the seawall at 9600 West Bay Harbor Drive, at the northwest corner of the intersection of West Bay Harbor Drive & Kane Concourse, Bay Harbor Islands, Florida.
11. **Consideration and Approval** of a proposal from Kimley-Horn and Associates, Inc. to provide engineering services for the replacement of sanitary sewer manhole frames and covers per DERM and Consent Decree requirements, at a lump sum amount of \$34,220.
12. **Consideration and Approval** of the Ruth K. Broad K-8 Center Nurse Initiative Memorandum of Understanding between the City of Miami Beach ("CMB"), North Bay Village ("NBV"), the Town of Bay Harbor Islands ("TBHI"), the Town of Surfside ("TS"), Bal Harbour Village ("BHV"), and the Miami Beach Chamber Education Foundation, Inc. ("MBCEF") (collectively, the "Parties"), to provide for funding and for the implementation of a Nurse Initiative for the school year 2023-2024, at a pro rata share of \$8,112.

A RESOLUTION OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING AMENDMENT NO. 6 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MIAMI BEACH, NORTH BAY VILLAGE, THE TOWN OF BAY HARBOR ISLANDS, THE TOWN OF SURFSIDE, BAL HARBOUR VILLAGE, AND THE MIAMI BEACH CHAMBER OF COMMERCE EDUCATION FOUNDATION, INC. TO FUND A NURSE ENHANCEMENT INITIATIVE FOR SCHOOL YEAR 2023/2024 FOR RUTH K BROAD BAY HARBOR K-8 CENTER; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AMENDMENT TO THE MOU; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

13. **Ratification of Approval** of an expenditure not to exceed \$50,000-\$75,000 for emergency repair of the sewer force main on 78th Street and Collins Avenue, under the Emergency Procurement regulations, pursuant to Section 2.1.3(a) of the Town Code.

ACTION: Council Member Bruder made a motion to approve the Consent agenda. Council Member Salver seconded the motion, and it passed unanimously on a poll vote.

6. Approval of Council Meeting Minutes
A.) February 1, 2023 Regular Council Meeting
B.) February 9, 2023 Special Council Meeting

Vice Mayor Fuller explained that he removed the items from the agenda because pages were missing.

14. **Consideration and Approval** of an ordinance on Second Reading amending Chapter 5, Article II of the Town Code, by revising section 5-29 and creating a new section to be numbered 5-30 entitled "Additional requirements and procedures for site development approvals."

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; AMENDING CHAPTER 5, ARTICLE II TITLED "DESIGN REVIEW BOARD," BY REVISING SECTION 5-29, NOTICE PROCEDURES FOR SITE DEVELOPMENT APPROVALS, AND CREATING A NEW SECTION 5-30 TITLED ADDITIONAL REQUIREMENTS AND PROCEDURES FOR SITE DEVELOPMENT PLAN APPROVALS; PROVIDING FOR INCORPORATION OF RECITALS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Council Member Bruder made a motion to move the item to the floor, and Council Member Robert Yaffe seconded the motion.

PUBLIC COMMENT

Maritza Haro, Bercow Radell Fernandez Larkin & Tapanes, 200 South Biscayne Boulevard, Suite 300, Miami, Florida, came forward and requested that the Community Meeting called for in Section 5-30.3(a) of the ordinance be allowed by a virtual option instead of in-person to facilitate attendance. She asked for clarification that the meeting is to be held a minimum of 14 days prior to the public hearing before the Town Council or Design Review Board Meeting (DRB), and not before the Development & Review Committee (DRC) Meeting.

Town Attorney Geller advised that there is no codified process for the DRC Meetings in the Code of Ordinances. The DRC is something that the Town Manager uses to coordinate staff's comments. He clarified the Community Meeting will be at least 14 days prior to a Town Council or a DRB meeting.

Mayor Tricoche stated that she was not opposed to developers hosting the meeting through zoom but would also like the option for in-person meetings. Council Member Yaffe asked if the Community Meeting would be a town meeting. Town Attorney Geller advised that the Community Meeting is a town required meeting where the developer has the burden of meeting with the community. Council Member Bruder suggested the meeting be held in person. Mrs. Haro spoke about the success of Zoom meetings with the community. She said she will coordinate with Town staff on the location of the meeting.

Council Member Yaffe made a motion to amend the ordinance to include language that an in-person meeting will be allowed, but virtual attendance shall also be provided for. Council Member D'Amico seconded the amendment to the motion, and all voted in favor.

PUBLIC COMMENTS

Frances Neuhut, 1060 Kane Concourse, came forward and spoke about the different dates for Council Meetings, Zoom meetings not being held, and public meeting announcements.

Matt Amster, Bercow Radell Fernandez Larkin & Tapanes, 200 South Biscayne Boulevard, Miami, Florida, came forward and suggested having an in-person and a separate virtual meeting, instead of simultaneously.

Council Member Yaffe mentioned that he attended a Condo Association meeting that lasted five hours, which was virtual and in-person, and it was not that difficult.

PUBLIC COMMENT CLOSED

ACTION: Council Member Bruder made a motion to adopt the ordinance to include language in the ordinance that an in-person meeting will be allowed, but virtual attendance shall also be provided for. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

ORDINANCES ON SECOND READING

15. **Consideration and Approval** of an ordinance on Second Reading amending Chapter 23, Article I, Sections 23-12 and 23-19 of the Town Code relative to buildings and structures projecting onto yard setbacks for interior and waterfront lots on the West Island.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; AMENDING CHAPTER 23, ARTICLE I, SECTION 23-12 OF THE TOWN'S CODE OF ORDINANCES, ENTITLED "GENERAL PROVISIONS," TO MODIFY SECTION 23-12 (15) AND (19) RELATED TO BUILDINGS AND STRUCTURES PROJECTING INTO YARD SETBACKS OF INTERIOR AND WATERFRONT LOTS ON THE WEST ISLAND; PROVIDING FOR ADOPTION OF RECITALS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Council Member Bruder moved the item to the floor, and Mayor Tricoche seconded the motion.

Council Member Yaffe stated that the rear setbacks facing the water should be treated differently.

Mayor Tricoche inquired about a gazebo that was approved to be in the setback by the Design Review Board and the Town Planner's comments that it was not subject to the zoning-in-progress and this ordinance. Town Attorney Geller advised that a zoning-in-progress ordinance was adopted, which means the Council can declare a zoning-in-progress on a particular thing, if it chooses to do so; which would require notice and adoption of a resolution which states that it will be zoning-in-progress. It's not an automatic thing. He mentioned he did suggest to the DRB that they might wish to defer the item, since it was up for consideration on second reading by the Council, and they declined his suggestion.

Further discussion ensued regarding the DRB approving the gazebo to be in the setback, knowing there was zoning-in-progress.

Council Member Yaffe asked if it was the house at 1310 101 Street that was completely gutted and was never approved by DRB, where there should have been a "Stop Work Order" on the property. He questioned how the project went to the DRB when it was in violation of the Code. They originally applied for a window permit, and knocked down the entire house instead, and are rebuilding it without any permits. Now, the DRB has approved the gazebo. Chief Building Official Mike Mesa explained that they have a permit for an interior build out. They do not have a permit for the façade and other work in the front of the house. He said there is a "Stop Work Order" for work that is not permitted.

The gazebos are not done; they requested approval from the DRB.

Town Attorney Geller advised that the approval by the DRB is subject to appeal. If a neighbor of someone is aggrieved by the decision, they can appeal the DRB's decision, which is not final. A member of the Council has a right to file an appeal but will have to recuse himself/herself.

The Council asked how the item got on the DRB agenda, when it violated the Code. Council Member Yaffe suggested there be a policy requiring projects with outstanding violations to not move forward, until the outstanding matter is corrected, whether it is a "Stop Work Order", etc.

Town Attorney Geller advised that the ordinance could be amended to include language that any decision of the DRB shall be subject to review by the Council, whether there is an appeal or not.

Council Member D'Amico asked why the regulation for the eaves was changed from two to three feet. She felt three feet would be too big, and would like it to go back to two feet, plus the reference should be "roof eaves"

Vice Mayor Fuller suggested Mr. Mesa review the permit package, and if anything in the package is false invalidate it, as it would be an improper submission. They should be required to replace everything as it was before. The Vice Mayor further stated that he was certain there was a conversation about the eaves that they were not to be extended. If they were allowed, there would be a limitation. He stated that the water has to pour onto the owners' property; it cannot create a flooding issue for the neighbor.

Town Attorney Geller explained that the existing language for the eaves states four feet, and there is no reason why the Council cannot change it to two feet. He advised that there are two possible amendments to the ordinance to not have the regulations apply to waterfront properties and that the eaves be changed from four feet to two. He said another alternative would be to defer it and include additional language regarding the water pouring from the eaves.

Council Member Bruder amended the motion to revise the ordinance for roof eaves to be no more than two (2) feet and to exclude rear setbacks facing the water. Mayor Tricoche seconded the amended motion, and all voted in favor.

Chief Building Official Mesa noted that the Town Code currently provides for the water from eaves to be retained on the property.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that ordinances are being changed and the Comprehensive Plan is not being followed.

Council Member Salver pointed out that all plans should be treated equally.

PUBLIC COMMENT CLOSED

ACTION: Council Member Bruder made a motion for roof eaves to be two (2) feet and for the changes to the ordinance to exclude the rear setbacks facing the water. Mayor Tricoche seconded the motion, and it passed unanimously on a poll vote.

29. **Discussion** of a contract for a new Police Chief. Sponsored by Vice Mayor Joshua Fuller and Council Member Stephanie Bruder.

Vice Mayor Fuller explained that notice was received of the impending departure of Police Chief Diaz. He stated that the Chief did a wonderful job of training his replacement from the time he came in; and he felt it was time to direct the Town Manager to start having the conversation as far as setting up the contract to bring Deputy Chief Noel as Police Chief. Council Member Bruder stated that the current Chief has worked with Deputy Chief Noel and has guided him. Deputy Chief Noel has been with the town a long time. She said he brings a different perspective than somebody outside because he knows the town, the people, the children, the seniors, and he has experience dealing with hurricanes. She felt that he was the right fit at the right time. Council Member D'Amico concurred. Mayor Tricoche stated that she was in favor of making Deputy Chief Noel Interim Chief, conducting the normal hiring process, and seeing who the right person for the position is. She said she supports this process for each person hired.

Town Attorney Geller advised that the Town Manager name the chief and set compensation, which is in her authority. The manager has the authority to spend up to \$20,000 for contracts for employees, and she decides the compensation from her budget. She has authority to expend appropriated funds as she sees fit, but it is only the Council that can give a contract, which is why the item is before the Council. He advised it is appropriate for the council to express their view point, but authority to hire is the manager's. Council Member Diallo expressed support for Deputy Chief Noel as Police Chief. It was noted he has been with the town for 17 years and has served as Interim Chief for four months.

Town Manager Lasday announced that Chief Raul Diaz has done a great job; he worked diligently with Deputy Chief Noel to prepare him and has recommended him as the next Chief. He told her that Deputy Chief Noel was ready to be the next chief. Chief Diaz came forward and expressed 100% support for Deputy Chief Lindsley for Chief of Police. He stated that he has done everything he has been asked to do, has gone above and beyond, and has the knowledge and experience to be a good chief.

ORDINANCES ON FIRST READING: There were no ordinances for First Reading.

DEFERRED ITEMS: There were no deferred items.

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

16. **Request for approval** of the location of a temporary Sales Gallery to be located in the Common Space of the Belmont Condominium at 10101 East Bay Harbor Drive, immediately south of the property: or at the property in a unique dome structure out near the water's edge.

Council Member Bruder made a motion to approve the Sales Center to be located in the Common Space of the Belmont Condominium, and Council Member Salver seconded the motion.

Council Member Bruder expressed her approval of the request due to the idea that the developer is going to fix the exterior building for use by the citizens of the Town, which is giving back in some ways.

Matt Amster, Bercow Radell Fernandez Larkin & Tapanes, 200 South Biscayne Boulevard, Miami, Florida, came forward on behalf of the Applicant PPG, BHT Owner, LLC. He stated that the project received Site Plan approval in December. The team is working on the Building Permit for the luxury condominium building, and they are looking to get a Sales Center, so they can sell the units.

He described the location of the property and stated they had meetings with the Belmont Condominium about the idea of using their community room for a Sales Center. There will be access for a driveway entering from their property; parking will be on the property off the street; there will be access along the waterway; and there will be a landscape architect to help beautify the parking area and the walkway in between. At cost to the developer, they will improve the community room for the community center operation for a period of time, and then turn it back over to the condominium association. The condo will get lease payment each month the Sales Center is there. The community room is approximately 800 square feet. The Sales Center will not be visible from the street.

Council Member D'Amico stated that she opposes placing a Sales Center in condominiums.

Council Member Salver pointed out that there is a very nice Sales Center in the middle of a residential neighborhood that was built for the Onda. For those who do not like this type of activity out in the open, this is the perfect solution to have that type of activity in a very covert manner in which the residents from the Belmont can benefit from. He stated his support for the request.

Council Member Yaffe expressed support for the request as well. He stated that the Council wants the Sales Centers to be on Kane Concourse for reasons they have discussed in the past. He stated his preference for the Sales Center at the Belmont, rather than having the bubble on the vacant lot.

Council Member D'Amico asked if the applicant had spoken to the Condominium Board. She expressed concern that the space will go from a Sales Center to something else that will be servicing businesses and have a huge impact on the residents. She wanted to ensure the residents were aware of what was happening.

Council Member Diallo pointed out that the residents will benefit by the redesigning of their space.

Council Member Yaffe made reference to the Letter of Intent with the Belmont. He said he prefers the Sales Center to be inside the building, if they are amenable to that. He pointed out that there are provisions in the Town Code that prevents other types of businesses in condominiums. He stated that he didn't think having this Sales Center there temporarily is going to devolve into condominiums having other types of businesses in their buildings.

Council Member Bruder expressed her support of the request stating the condominium will get a remodeled space with electrical. She stated that the Condominium Board who represents their residents came to an agreement, and she was in favor.

Vice Mayor Fuller stated that the most recent legislative session put a horrific burden on a lot of condominiums. And this will provide, at least some relief, for the next-door condominium. Condominiums will be looking at a lot of new expenses, and this sets the ground work potentially and in the future as well, for some revenue stream to try and offset the new burden that has been imposed on them. He stated that they were referring to a diagram of 800 square feet, potentially increasing the value long-term for the next-door neighbor as well. Belmont Condominium will get revenue that they can put towards their building, and at the same time have an improved room for use at the end of this lease.

Mayor Tricoche expressed real concern against the request. She explained that the Council voted not to allow Sales Centers in the Residential District. She said it is disruptive and unsafe to have Sales Centers in the Residential District, and the safety measures that exist in existing condominiums were being subverted.

Council Member Diallo asked if the parking will be on site. Mr. Amster confirmed that the parking will be on their site.

Mayor Tricoche asked Mr. Amster if the Sales Center is behind the locked door that the residents now use to be able to have as a safety measure to access their elevator. Mr. Amster stated that access is from the water side into the building. He explained that the condominium provided an intent to lease as they are going to be a partner to allow the Sales Center to work; the hours of operation will be from 10:00 a.m. to 6:00 p.m.

Vice Mayor Fuller amended the motion to require the parking to remain on the applicant's property at all times. If the parking is removed, the Sales Center has to be closed. Council Member Yaffe seconded the amended motion, and all voted in favor.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and opposed the Sales Center which she felt is nonconforming. She also questioned the parking.

PUBLIC COMMENT CLOSED

Council Member Salver stated that he has only seen a maximum of two (2) cars parked at the Onda at any given time. He stated that it is not a high-volume type of use. Instead of having a trailer or building a new building with a Sales Center in the middle of the Residential District, there will be something hidden inside a condominium where the condominium welcomes them.

ACTION: Vice Mayor Fuller made a motion to approve the request for the Belmont option with the condition that the parking shall remain on the applicant's property at all times. If the parking is removed, the Sales Center shall be closed. Council Member Yaffe seconded the motion, and it passed 5-2 on a poll vote with Mayor Tricoche and Council Member D'Amico opposing.

17. **Request for approval** of the location of a temporary Sales Center at 10301 East Bay Harbor Drive in connection with the development of the properties at 9781 and 9927-9955 East Bay Harbor Drive, by 9781 Bay Harbor Development LLC, 9955 Bay Harbor Development LLC. Duration of the sales center is expected through March 31, 2026.

Council Member Yaffe made a motion to bring the item to the floor, and Council Member Bruder seconded the motion.

Council Member Bruder asked the Applicant if the proposed Sales Center is for more than one project.

Joe Ruiz, 220 Miracle Mile, Coral Gables, Florida, representing the Applicant, came forward and stated that the applicant owns three separate properties on the islands, 10301 East Bay Harbor Drive (10301) (the site of the Sales Center), 9781 East Bay Harbor Drive, and 9919-955 East Bay Harbor Drive, all of which have site plan approvals. Mayor Tricoche asked for clarification that the request is to utilize the current Onda Sales Center and replace it with a Sales Center for the project that will be at 10301. Mr. Ruiz confirmed. She asked Mr. Ruiz if he was advised by Onda when they came before the Town Council with the request, they were advised the Sales Center was exclusively for their use and was to be torn down afterwards. Mr. Ruiz said he was not aware.

Vice Mayor Fuller recalled it was part of the deal to remove the Sales Center once they were done with the project.

Mayor Tricoche stated that the Council already said it was for one-time use; they tried it, and it did not work. She expressed opposition to the request. Council Member Salver asked how it did not work. Mayor Tricoche responded that it pulled people into the Residential District who otherwise would not have been there. It's increasing traffic and increasing people walking around the Residential District looking around. Plus, visitors to the Sales Center park wherever. She stated that Sales Centers belong on Kane Concourse on the second floor or above, and it does not make sense to have them in the Residential District.

Council Member Bruder asked how many parking spaces are on the property. Mr. Ruiz responded there are seven parking spaces, one of which is ADA complaint. He added he was not able to speak about the Onda Sales Center and how it would be managed.

Vice Mayor Fuller stated that he felt the sales center worked. People are going to come onto the islands. If they are going to buy a unit, they are going to drive or walk around the area. There was a benefit bestowed upon the town as part of the agreement that they were going to remove the Sales Center. There is a financial cost to ONDA for removing and destroying their facility. He stated that he would like to know what is the financial cost that ONDA would have incurred for demolishing the Sales Center and clearing the land. Those funds could be used for some of the town's residents, including potentially some of the apartments and condominiums together on the east island that are incurring some other additional cost and the distress of potentially having those units around. He said if that money is transferred to the town, he would have no problem with them using the facility.

Council Member D'Amico asked about signage for the Sales Center. She felt there would be a lot of activity for three different projects. Mr. Ruiz said there will be one sign. Council Member D'Amico stated that the Sales Center would be there until 2026, and she felt it would set a precedence.

Council Member Yaffe stated that he was not opposed to the town receiving a benefit for permitting the structure to remain. There was discussion about having Sales Centers on the second floor or higher in buildings on Kane Concourse, because the Council does not want them on the ground floor, but the ordinance was not adopted. So, it is not established that they have to be on the second floor. He asked Mr. Ruiz if they were to sell the units sooner, if the Sales Center would be removed sooner than the three years. Mr. Ruiz stated they would have to remove it, as the area would be redeveloped. He said the fees will be paid to the town at some point, because once the site is ready for development, the temporary Sales Center is going to be demolished and the town will be receiving the fees at that point. Council Member Yaffe asked if ONDA will remain responsible for the cost of removing the Sales Center. Mr. Ruiz said yes.

Vice Mayor Fuller clarified that he was not referring to fees for demolition. He explained the idea that anytime demolition is being done, between demolition, hauling away, clearing, there is a cost, which ONDA is going to have to pick up. The idea is for that cost to be paid to the town.

Council Member Bruder asked what the benefit to the town is in keeping the Sales Center that should not be there.

Discussion ensued as to whether Mr. Ruiz would like to defer the item to next month until he receives an answer. He stated that he will wait and see if there is time for the Council to continue with their item, if not he'll defer to the next meeting.

19. **Consideration and Approval** of a request by Bay Harbor Islands Property Owner I LLC and Bay Harbor Islands Property Owner II LLC to amend Paragraph 6(e) of the Parking Trust Agreements for the La Baia South and the La Baia North projects.

Council Member Yaffe moved the item to the floor, and Council Member Bruder seconded the motion.

Council Member Yaffe explained that the amendment is standard language that would allow the lender to take over the project and complete it, if the developer were to run into financial issues.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the town is putting non-conforming usage in all of the districts, invading the Residential District, and allowing the residential project to have 39 spaces in the public parking lot. She spoke of the lack of parking, residents on the east island have big problems, buildings going up all over the place, transient people walking the area, and the council allowing residential to go into the public parking lot, not to be on the condominium itself.

PUBLIC COMMENT CLOSED

Vice Mayor Fuller stated for the record that the majority of the Council Members reside on the East Island.

ACTION: Council Member Yaffe made a motion to approve the request. Council Member Bruder seconded the motion, and it passed 6-1 with Mayor Tricoche opposing.

18. **Consideration and Approval** of a request to issue a Request for Qualifications (RFQ) for qualified, experienced, and licensed firm/s to provide a Design Criteria Package for the design of a new 6-story building garage and a new Town Hall.

Mayor Tricoche moved the item to the floor, and Council Member Bruder seconded the motion.

Council Member Yaffe asked if there would be a 6-story building with a garage. Town Manager Lasday responded that it would be the Council's decision. The request is for an RFQ to start designing and give some ideas. Vice Mayor Fuller requested that the RFQ leaves it open for six or more floors, as a decision has not been made on the number of floors.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and discussed parking issues and raised concern to the location of the garage.

PUBLIC COMMENT CLOSED

Council Member D'Amico questioned details in the RFQ and suggested that a massing study be done. Town Manager Lasday explained that staff is trying to start the RFQ process, and they can work with Council Member D'Amico on changes.

ACTION: Mayor Tricoche made a motion to approve the issuance of the RFQ. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

At this time Town Manager Lasday introduced Gerri Lazarre from TriMerge, who is filling in for the Finance Department.

~~20. Discussion and Possible action regarding settlement of the Charge of Discrimination No. EEOC 510 2020 03421 filed with the Equal Employment Opportunity Commission.~~ -

DISCUSSION ITEMS:

21. **Discussion** regarding moving Bay Harbor Islands General Election to November to piggyback off of Miami-Dade County General Election. Sponsored by Mayor Elizabeth Tricoche.

Mayor Tricoche explained and provided data that showed although more people vote in November, as they get further down the ballot, they vote less, and even on the items that less people vote on, there is still somewhere between 300-600 more votes on lower items than in the current general election. She opined that they need to get as many people as possible to vote, and if moving the election to November would allow for more of the constituency to vote; the Council has a responsibility to support elections in November. She said she supports the change. Discussion followed on the effect of the change on current terms, having the April election with a one-time six-month term, then commence the next election in November, how will it work during the odd years when there is no election in November. The continued to discuss the requirement for a Charter amendment to change the election date, that the subject matter have been discussed multiple times, the idea to get as many people to the voting booth as possible, people are aware that elections are in November, BHI residents have to be reminded of the town's elections in April, putting the elections to November would turn it into a much more partisan race, switching to November would create an incredibly unfair advantage for incumbents as it would result in increased marketing cost, the town's item would become the last thing on the ballot, changing the date would create a scenario where people will not be focused on BHI, people will be talking about national politics in November,

leaving the election in April provides for a more fair election and it allows for more attention to be paid to the candidates, people who will be coming out to vote in April will pay attention specifically to Bay Harbor, Bay Harbor items wouldn't be the last thing that is punched in after the bonds, people have elected the Council on a four-year term, opposition to delaying terms, and it's not known if having six-month Council term and starting the voting in November will work.

The mayor stated it does not appear there is a desire to make the change and moved on to the next item.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated the Town does not have a Charter Review Committee anymore. She said she has not seen much change with election in April for 28 years, and new members are needed on Council. She asked how early voting will work.

PUBLIC COMMENT CLOSED

Council Member Yaffe explained that he was not available to attend the Candidate Debate that was tentatively set by the League of Women voters on a Thursday when he was going to be in Tallahassee. He contacted the Town Clerk about having the event the following Tuesday, but not all of the other candidates wanted to do so.

Council Member Salver pointed out that a Candidate Forum was held at the Island Pointe Condominium, which Mrs. Neuhut attended. And the town's election rules are so liberal that one could qualify to run up, until 30 days before the election.

Council Member Yaffe clarified with the Town Clerk that he could have put in his Notice of Intent to be a candidate six months before the election and declaring at that point would have given him the ability to fundraise as a candidate.

Vice Mayor Fuller addressed comments by Mrs. Neuhut regarding members of the Council writing the Town's Charter, because some members served on the Charter & Ordinance Committee for many years. He noted that the Charter was written back in the 1940's.

Council Member Yaffe stated that the town advertised for members of the Charter & Ordinance Review Committee, and only one person applied.

Council Member D'Amico stated there is something that does not allow the Candidate Forum to go on unless all of the candidates have accepted. She stated that they need to get people to be qualified and get people to meet the candidates before the last week of the election.

Council Member Yaffe stated that the Town Clerk contacted him about a debate with one individual and he declined because all of the candidates should participate. Vice Mayor Fuller stated that he has always been in favor of the debate. He explained that the date was not chosen by the town. He said the town has made multiple requests for the forum to be held earlier.

21. **Discussion** regarding amendment to Section 6-4 of the Town Code to provide for early voting during Town elections. Sponsored by Council Member Isaac Salver.

Council Member Salver explained that early voting would allow a greater turnout for voting in the Town elections. He stated that Miami Shores and other small towns similar to Bay Harbor have one or two days of early voting. He suggested the Miami-Dade County Elections Department be informed that the town wishes to have early voting in an effort to get better turn out for local elections. Town Attorney Geller asked how many days and when would the early voting be. It was the consensus of the Council for Council Member Salver to work with Town Attorney Geller on the proposed ordinance for election early voting.

It was the consensus of the Council to move the following remaining items to the next Council Meeting Agenda:

- ~~22. **Discussion** regarding danger posed by the palm fronds that fall from the Palm trees along Kane Concourse. Sponsored by Council Member Stephanie Bruder.~~
- ~~23. **Discussion** regarding the addition of a Mobile Command Post in the 2023/2024 Capital Improvement Plan. Sponsored by Council Member Stephanie Bruder.~~
- ~~24. **Discussion** regarding the requirements of the Design Review Board submittal package. Sponsored by Council Member Teri D'Amico.~~
- ~~25. **Discussion** and **Consideration** of Possible Action regarding a study of the perimeter of Bay Harbor Islands East Island's Seawall shoreline. Sponsored by Council Member Teri D'Amico.~~
- ~~26. **Discussion** and **Possible Action** regarding the creation of Massing and Transportation Study. Sponsored by Council Member Teri D'Amico.~~
- ~~27. **Discussion** to address the Appeal process against quasi-judicial and administrative decisions having development approval authority. Sponsored by Council Member Teri D'Amico. Enclosed is the research paper prepared by the staff.~~

Mayor Tricoche asked staff to ensure that Council Member D'Amico's items are addressed at the next Council Meeting.

There being no further business the meeting adjourned at 10:59 p.m.

MINUTES OF A REGULAR COUNCIL MEETING held on May 10, 2023 -----22

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR COUNCIL MEETING**

A Regular Meeting of the Town Council was held on Wednesday, June 14, 2023, at 7:02 p.m. Upon roll call the following members responded:

Mayor Elizabeth Tricoche	
Vice Mayor Joshua Fuller	Council Member Stephanie Bruder
Council Member Teri D'Amico	Council Member Isaac Salver
Council Member Robert Yaffe	

Council Member Molly Diallo was absent.

1. Oath of Office - Chief Noel Lindsley

Council Members Stephanie Bruder and Isaac Salver administered the Law Enforcement Oath of Office to Police Chief Lindsley Noel.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS: TOWN

MANAGER'S REPORT:

Town Manager Lasday informed the Council that Council Member Diallo was absent due to attendance at a family graduation.

The Town Manager reported on the following:

- The Honorable Senator Shevrin Jones will attend the August 9, 2023 Town Council Meeting.
- Request to place an item on the August Town Council Meeting agenda to clarify if padel courts and pickle ball courts are included in the definition of recreational game court facilities
- Clarification as to whether the ordinance adopted at the last Council Meeting regarding regulations and setbacks for the west island could also be applied to multifamily units in the east island

Discussion followed on the matter as to whether there was ambiguity in the language. It was the consensus of the Town Council for the Town Attorney to discuss the matter with the Town Manager. If there is a problem, he will bring back the ordinance for review. The Town Manager will provide an answer in her Manager's Report to the Council.

The Town Manager continued to report on the following items:

- The \$800,000 in grant funding appropriated by the legislature for an emergency backup generator and \$250,000 for ejector pumps
- A consensus to use Option B for the walkway structure for the 1177 Kane Concourse project. Council Member D'Amico asked about the location of the walkway on the property. Town Manager Lasday explained that the property owner is required to build at the lot line. Therefore, a safety structure will be installed, since pedestrians must be able to use the sidewalk.

- Budget Workshop scheduled for June 28, 2023 at 6:30 p.m., and a possible Special Council Meeting after to address budget amendments and carryforwards
- Juneteenth holiday on Monday, June 19, 2023

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Salver stated that he attended the Florida League of Cities' executive committee meeting as well as other Children's Trust meetings last week. He encouraged the town's senior citizens to take the Parks and Recreation Committee's suggested trip to St. Augustine.

Council Member D'Amico reported that she attended the PBA Gala, where Officer Ortega was honored with the Rookie of the Year Award. She informed the Council that she will be visiting the Miami Shores Community Center to find out what the residency fee covers and how much swimming lessons cost. She continued to emphasize the importance of swimming lessons, suggesting that the town provide shuttle transportation for children during the summer. She explained that BHI residents have the same benefits as Miami Shores residents. The pool and splash pad cost \$5-\$7 to use. Mayor Tricoche asked the Town Manager to investigate if the town has the authority to increase the geo footprint so that Freebee could be used as a shuttle to the Miami Shores Country Club. Council Member Bruder suggested investigating the minimum age at which a child is permitted to use the Freebee on their own, so that the Town is not held liable for any incidents. Vice Mayor Fuller said he supports children taking swimming lessons. However, aside from the legal aspect, he opposed expanding freebee services to the country club because the Town only has one Freebee, resulting in a significant wait time for residents. Town Manager Lasday explained that the Town is soliciting bids for the shuttle bus, which could be used to transport residents to the Miami Shores Country Club. Council Member D'Amico suggested that the Town publicize this benefit to residents because she believes they are unaware of it. Council Member Bruder stated that she spoke with the Mayor of Surfside regarding swimming classes for small children, and he will contact her with more information, if it is possible to use their facility. Mayor Tricoche explained that the Town purchased residency for use of the pool, but she wanted to know if the Council is interested in purchasing residencies for all the programs they offer. Town Manager Lasday responded that she will contact the Village Manager for additional information.

Council Member Yaffe reported that several Councilmembers attended the Miami-Dade County League of Cities Meeting last month, where the Board of Directors were sworn in. Their Annual Gala will be held at Hard Rock Stadium on June 24th. He encouraged Council Members to participate in Policy Committees as the Florida League of Cities is currently accepting applications. He explained that in February, he conducted a workshop with Chief Building Official Mesa regarding the new condominium laws. He felt that HB154 was a glitch bill, and he would be updating the board members and condo owners on these regulations either through another workshop or in the town's newsletter. He mentioned attending a City of Miami Commission Meeting last week, and felt the town gives residents more information and the opportunity to speak on every agenda item. He said he was much more appreciative of how the town's meetings are conducted compared to meetings in other municipalities.

Council Member Bruder thanked the Town Manager for the excellent Town Manager's Report and suggested it would suffice if she provided it once a month, unless there was special meeting. She reported that she visited the School Board with the Town Attorney and had meetings with the Town's representative and higher-ups, including Chief of Staff Jose Bueno. She reminded the School Board personnel of the 1,200-student cap in the agreement and expressed the Council's displeasure at the lack of communication, the inability to visit the school, and the lack of information provided by the institution. The School Board stated that the issues raised will be addressed in the coming school year. She also mentioned that the Town Attorney and staff will be working on a communication compact, and that she will be meeting with the Regional Superintendent the following month. She added that the School Board had given approval for the Police to use the school's facilities to train new officers for emergency evacuation drills.

Council Member Salver inquired about the status of the school's air conditioning. Council Member Bruder stated that she informed the School Board that the students were kept in heated classrooms and that portable air conditioning should be provided. Mr. Bueno responded that they are working on the problem and that a/c parts are on backorder. She discussed the alarm system with them, and they agreed to investigate the matter.

Vice Mayor Fuller inquired about the incident with the swastika. Council Member Bruder responded that they were unaware of the incident and were very upset about it. She did inform the School Board that this was a missed opportunity, and that the Federation was willing to pay for a field trip to the Holocaust Museum for eighth-grade students. She went on to explain her conversation with Mr. Bueno about the swastika, the logistics of how it got there, and why anyone would think it was okay not to act quickly. Mr. Bueno admitted the school made a mistake.

Town Attorney Geller stated that the School Board was very helpful and over the top. They promised that the school would get back to its former glory and that all the issues would be resolved. Additionally, Mr. Geller reported that following the meetings, he and Council Member Bruder met with the district's school board representative, who expressed her desire to address the Council, but preferred to be invited. He suggested an invitation be extended to her.

Mayor Tricoche congratulated Ivan Bobic, an eighth-grade student, on receiving the award for excellence.

Mayor Tricoche requested that the Town Clerk contact the school representative and invite her to the August or September Regular Council meeting.

Town Attorney Geller informed the Council that a compact is being created by staff and will be presented to them. Council Member Salver enquired as to how the school's 1,200 students are balanced and how many students are enrolled. Mayor Tricoche replied there are more than 1,400 students. Council Member Bruder explained that she informed them of the lack of student verifications, as well as the fact that the compact only allows for 1,200 students. They were surprised that this wasn't being done. The School Board informed her that the language of the compact only takes students in kindergarten through eighth grade into account, and that Pre-K students are not included in the total number of students enrolled.

She believed that after the compact was finished, the problems ought to get better. Vice Mayor Fuller replied that the Town should hold them responsible for enforcing the rule, because they are not doing so. Additionally, he reminded Council Member Bruder to bring up, at their upcoming meeting, the fact that maintaining a cap of 1,200 students is a condition of the school's extension agreement.

Council Member Bruder praised Town Manager Lasday and Vice Mayor Fuller for their excellent work in Washington, D.C. She said that because the bridge is more than 71 years old, it must be replaced because it is outdated. She reported that she, Vice Mayor Fuller, and Town Manager Lasday had worked with the state to secure funding for the bridge and that they will keep up their hard work to secure additional funding. She stated that since the tot lot was funded by the state, it will not be removed. She mentioned receiving calls about speed bumps and believed the town needs them. She requested that the Town Manager contact Surfside about their speed bump purchase procedure. Town Manager Lasday advised the Council that road improvements will be addressed after the manholes are fixed.

Vice Mayor Fuller congratulated Chief Noel on his promotion and expressed gratitude to former Chief Diaz for his commitment to the town and country. He reported that he and the Town Manager had traveled to Washington, D.C., and that the financing for the bridge appeared promising. The town has been patching up the bridge for years, and there is only so much they can do. Whenever they attempt patchwork, they discover that the structural flaws make it impossible to proceed. As a result, it has turned into a safety hazard and no one on the Council intends to create a safety hazard for the citizens or visitors to the town. He declared that since the bridge is beyond repair, a replacement is required. He clarified that the town has an opportunity to benefit from federal funding, and the Town has chosen to capitalize on the availability. The bridge affects the entire south Florida community, not just the town. He added they have met with congressional representatives, state representatives, and representatives from the US Department of Transportation, and he expects financial support from both the federal and state governments.

Mayor Tricoche thanked the staff, Council, and the office of House Representative Federica Wilson for advancing funding for the project. She commended staff for their efforts in obtaining grants and funding allocations for the bridge, as well as their ongoing search for funding for the new town hall.

Council Member Yaffe asked the Town Manager when staff will be moving to the 95th street parking lot. Public Works Director Jason Atkinson came forward and explained that the move was pending Fire inspection and electrical components from FPL. He anticipated staff working in the portable hubs within the next 30-40 days.

PUBLIC COMMENT

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and congratulated Chief Noel on his promotion and expressed gratitude to the Council for granting the promotion. She said she had discussed developer donations with Mayor Shlomo and that the town ought to demand something in return from developers. She asked why no weight restrictions are posted on the bridge. As requested by the Book Club, she asked that a dance floor be made available during the Motown Concerts. She inquired as to why Zoom was not yet accessible.

Town Engineer Carrero-Santana came forward and stated that the bridge has a weight limit, which has been reduced due to the bridge's condition. He informed the Council that staff will work to have the weight limit displayed on all bridge signs.

Anna Marie Kelly Stoppa, 1065 94 Street, came forward stated and that the building she moved into had a structural condition assessment, which indicated that, due to the building's age, there was no immediate threat, but that damage could worsen and increase if repairs were not made. She alleged the building's owners never told the occupants of this information. She stated that no one had ever inspected the property before April 23, 2023, and that her photos from 2021 and 2023 are noticeably different. She opined that the owner lacked the right to appoint someone to represent him in the Special Magistrate Hearing by signing an affidavit. She submitted the structural assessment report and building photos into the record.

Frances Neuht, 1060 Kane Concourse, came forward and stated that on July 19, 2016, the Church by the Sea site development plan was approved as mixed-use and does not have a Unity of Title for their three properties. She voiced disagreement with the Council on allowing Church by the Sea to be in the Business District, which she felt created a parking crisis.

Dave Sanchez, 1080 94 Street, came forward and said that the water overflow flooding the sidewalks is prevented from clearing out by the barricades by Church by the Sea. He requested that no building be allowed to prevent water access from being cleared out. In addition, he expressed concern for the school's students and asked the Council what would happen to the two vacant buildings in the town.

Vice Mayor Fuller responded that while the construction is progressing, the Council has been dissatisfied with how Church by the Sea is moving the construction along. Despite this, the town will continue to push for compliance, because the water backing up is a code enforcement issue. He explained that the two properties are private properties, and he did not expect them to be there for long because there is such a strong demand for properties in Bay Harbor. Concerning the school, the Council has limitations. However, one of the issues they encountered was that the remedy for the incident in the restroom took too long. The issue was not only that it was there, but that it lingered for a while, which must be addressed. The Council may not be able to prevent it, but the school can address it, so that it does not reoccur.

Council Member D'Amico believed the circumstances on the street mentioned by Mr. Sanchez to be dangerous; she stated that the Church by the Sea ought to be able to resolve the issue.

Mayor Tricoche requested that the Town Manager give an update on the two buildings that Mr. Sanchez had mentioned, as well as arrange for Code Compliance to visit East Bay Harbor Drive and 95th Street, and promptly address the concerns raised.

COMMITTEE REPORTS:

2. **Report** from the Parks and Recreation Committee regarding their April 19, 2023 meeting.

Kathleen Kennedy, Chair of Parks and Recreation Committee, came forward and reported that the committee wants to hold a Dog Parade in October. She recommended employing a park ranger for the weekends between 3:00 and 8:00 p.m. She commended Joel Jacobi's efforts toward enhancing the school. She added that former Mayor Linda Zilber had recommended starting a dining club. She questioned why the pool in the Town of Surfside pool is off-limits to residents. In response, Mayor Tricoche stated that since the pool is privately funded, the town has discretion over who uses it. Vice Mayor Fuller stated that despite their prior attempts, they have never been allowed entry to the Surfside pool. Ms. Kennedy added that Co-ed tennis was requested by a resident. Mayor Tricoche responded that the tennis program is co-ed. Ms. Kennedy also asked if the Council would be amenable to placing crossing guards in parks on weekends. Mayor Tricoche stated that crossing guards are already on duty at the parks from 3:00 p.m. to 8:00 p.m. on weekdays and weekends. Mayor Tricoche inquired as to whether the Committee would reinstate Teen Nights. Ms. Kennedy responded that there are discussions about holding events at the skate park.

PUBLIC COMMENT

Ree Stoppa, 1065 94 Street, came forward and stated that everyone on the dais should be respectful and use proper language. She claimed that Ms. Kennedy was disrespectful to her via text, which she found unacceptable.

PUBLIC COMMENT CLOSED

CONSENT AGENDA: Set for approximately 7:55 p.m. *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

3. Approval of the following Council Meeting Minutes:
 - A. February 9, 2023 Special Council Meeting
 - B. April 10, 2023 Organizational Meeting
4. **Ratification of Approval** of Engagement Letter with TriMerge Consulting Group for temporary professional governmental financial, accounting, and audit support, effective April 20, 2023.
5. **Consideration and Approval** of a Resolution updating the list of authorized signers for the town's accounts with Bank of America.

**A RESOLUTION OF THE TOWN
COUNCIL OF THE TOWN OF BAY
HARBOR ISLANDS, FLORIDA,
AUTHORIZING DEPOSITS AND
WITHDRAWALS OF TOWN FUNDS IN
CERTAIN ACCOUNTS; PROVIDING
FOR INCORPORATION OF RECITALS;
AND PROVIDING FOR AN EFFECTIVE
DATE.**

ACTION: Council Member Bruder made a motion to approve the Consent Agenda. Council Member D'Amico seconded the motion, and it passed unanimously on a poll vote.

PUBLIC HEARING

6. Resolution approving or denying a request for approval for a revision for a new mixed-used mid-rise development for "1177 Bay Harbor Islands, LLC" located at 1177 Kane Concourse, Lots 5-14 of Block 21 and Lot 32 of Block 3. On August 20, 2019 (Resolution No 2185) the Board approved the original site plan. The owners have made site modifications that include a reduction in the number of DU from 89 to 54. The residential units will no longer be "rentals" as originally approved but will now be sold via condominiums. Due to the change in the number of DUs, the residential floor layouts have changed, which caused changes to the building's appearance (windows/balconies).

Vice Mayor Fuller stated for the record that at first, he recused himself due to the appearance of a conflict. Town Attorney Geller stated for the record that he initially believed there was no conflict and believed the Vice Mayor does not need to recuse himself if there is no longer a conflict of interest.

Council Member Salver moved the item to the floor and Council Member D'Amico seconded the motion.

Town Attorney Geller swore in all witnesses who testified.

Graham Penn, 200 S. Biscayne Boulevard, Miami, Florida, came forward and introduced Steven Rosen and Luis Astores. Mr. Penn gave a presentation of the project outlining the changes. He clarified that the density was decreased in the first revision when the units were changed from 89 to 54. By bringing the ground floor up to date with the town's current flood regulations, the second revision addressed resilience. There were no alterations made to the office or retail space, and the main lobby was relocated to the second floor. They increased the project's parking space count. He addressed the Design Review Board's (DRB) comments regarding the size of the balcony on the northwest corner and the public's ability to use the parking lot on weekends and after hours. He stated that he supported the proposal during the DRB meeting and reiterated to the Council that they have no issues with allowing off-peak parking, if it would help the town's Business District.

Mr. Penn was asked by Council Member Bruder if public parking would be permitted during the day or only at night. Mr. Penn replied that the analysis showed that 307 spaces were needed for office space and 25 spaces were needed for retail. They committed to making those spaces public during off-peak hours, including weekends and evenings, and to offer free parking for one hour in accordance with the Development Agreement. Council Member Bruder enquired as to whether workforce housing had been considered. Mr. Penn responded that workforce housing would be difficult to implement. Council Member Bruder explained the terms of the development agreement to dispel any misconceptions that the town received a generous donation when, in fact, there was a land trade-off. Mr. Penn also stated that due to the reduction in density, they will no longer require the TDRs, but they are committed to keeping them.

Vice Mayor Fuller clarified that the developer and the town had exchanged properties. The land west of the project will be turned into a waterfront park reserved for Bay Harbor Islands residents only, complete with a kayak and paddle board launch. He stated that while he recognized that TDRs are a requirement of the agreement, he still wanted to restrict their sales. Council Member D'Amico stated that the TDRs should be returned if the applicant isn't using them. Vice Mayor Fuller clarified that there is a contract and a legal dispute regarding the Town's ability to reclaim the TDRs, but he did not wish to pursue the matter further or see them sold. Additionally, he demanded a ban on short-term rentals for this project, because the units are becoming condominiums instead of apartments. Mayor Tricoche stated that it would not be permitted according to the development agreement. Town Attorney Geller suggested that an amended Development Agreement be drafted to include both of Vice Mayor Fuller's conditions. Mr. Penn read out the section on short-term rentals and felt that the language was adequate; Vice Mayor disagreed.

Council Member D'Amico raised a concern over the excessive amount of glass and stucco on the east side of the project. Mr. Astores responded that because of the proximity to the property line, they are limited, by the Fire Department, in the amount of glass that can be used. Based on the setback, only a percentage is allowed to be glass. Council Member Yaffe questioned why a lower green wall that was included in the original rendering was later removed. Mr. Astores clarified that the vine would never have grown because it was only six inches long. Mr. Astores concurred with Council Member D'Amico's suggestion to place rendered stucco scoring.

Council Member Salver expressed his approval of the project and design and said the town should adhere to the original agreement with the developer. He gave them credit for lowering density, as it will enhance traffic and quality of life.

Council Member Yaffe stated that the Business District will benefit from the one-hour free parking. He clarified that greenery was supposed to be on the wall in the alleyway facing the 1111 Kane Concourse garage, but it was taken out of the plans. He proposed adding something to soften the façade instead. In response, Mr. Astores stated that research indicated the vines depicted in the original renderings were not able to grow in such a small area.

Council Member Yaffe asked for some changes to be made to the wall's façade. Council Member D'Amico recommended that the developer submit a revised proposal for the eastern wall to the DRB.

Mayor Tricoche voiced her worries about the TDRs, believing that the town would keep the money if the developer didn't use them. Vice Mayor Fuller clarified that while TDRs are transferred at the conclusion of a project, they are not transferred if it is not carried out. Since the developer in this instance has already paid for the TDRs, they contend that they already own them and that their only grievance is with them selling the TDRs. To balance the town, Mayor Tricoche stated that she would prefer that they sell their TDRs. Council Member Salver reminded the Council that since the TDRs are in the business district, the developer's options are restricted. If they are sold, they would need to remain there.

Town Planner Miller's Staff Report was entered into the record as evidence.

PUBLIC COMMENTS

Dave Sanchez, 1080 94 Street, came forward and expressed concern about the construction's progress and blockade issues.

Vice Mayor Fuller stated that plans have been made to have as little of an impact as possible on traffic on Kane Concourse. Council Member Salver stated that the Council negotiated with the developer and confirmed there will be no entry or exit on 96 Street or Kane Concourse, with the alleyway being the only area where traffic is expected, in order to mitigate traffic impact.

Frances Neuhut, 1060 Kane Concourse, came forward and requested that the Council look into the matter, stating that the elevation for this project was raised, affecting the 75-foot height restriction. She requested that the Council begin work on the Business District's parking and specify the number of mechanical lifts that will be included in this project.

PUBLIC COMMENT CLOSED

Council Member Salver moved to amend his motion to approve the project subject to review by the DRB for the design improvement on the east façade.

Vice Mayor Fuller requested the amended motion state that the Town Attorney should review the agreement before proceeding, to make sure the town is protected regarding short-term rentals. Extensive discussion continued on the matter. Mr. Penn believed that the town was protected since they entered a Restrictive Covenant rather than a Unity of Title, which encumbers itself with the short-term rental restriction. However, if Mr. Geller determines that they need to amend, they would be open to doing so.

Vice Mayor Fuller stated that they would be open to approving the project, subject to a review of the agreement, if they are certain there are no problems.

ACTION: Council Member Salver made a motion to approve the request and Council Member D'Amico seconded the motion. Council Member Salver amended his motion to approve the project subject to review by the DRB for the design improvement on the east façade. Council Member D'Amico seconded the motion, and it passed 4-2 on a poll vote with Vice Mayor Fuller and Council Member Bruder opposing.

Council Member Salver asked whether the developer intended to have short-term rentals, and Mr. Rosen confirmed that they will not have short-term rentals.

It was the consensus of the Council to choose option B for the walkway.

ORDINANCES ON SECOND READING:

There were no ordinances for second reading.

ORDINANCES ON FIRST READING:

7. **Consideration and Approval** of an ordinance on First Reading regarding Town Elections, amending Section 6-4 of the Town Code to provide for one day of early voting. Sponsored by Council Member Isaac Salver.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING SECTION 6-4 OF THE TOWN CODE PROVIDING EARLY VOTING FOR MUNICIPAL ELECTIONS, PURSUANT TO SECTION 100.3605, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICT AND REPEALER; AND AN EFFECTIVE DATE.

Council Member Salver moved the item to the floor, and Council Member Yaffe seconded the motion.

Town Attorney Geller clarified that two days of early voting should be stated in the ordinance. He clarified that early voting would be permitted on Saturdays and one day between Tuesday and Thursday before the election week. The exact day would be decided by the Council through a resolution 60 days before the election.

Vice Mayor Fuller stated the price for the election would be \$27,000 because the quote provided was only for one day. Council Member D'Amico asked if it's cheaper to hold the early voting on Friday and Saturday. Vice Mayor Fuller responded no, the quote specifically says \$13,500 for one day, one site. Town Attorney Geller responded that the amount attributable to the early voting portion is a smaller amount.

Vice Mayor Fuller reminded staff of the importance of adding the financial/budget impact on the agenda to ensure the public and the Council are aware of the financial impact on the items.

Town Clerk Hamilton clarified that the estimate provided to them is for one day of early voting.

PUBLIC COMMENT

Dave Sanchez, 1080 94 Street, came forward and expressed his approval of the concept of early voting. He emphasized the significance of voting and thought that the turnout rate would rise. He proposed that the Town set up a page specifically for elections.

Council Member D'Amico thanked him for his concern and for encouraging people to cast their votes. Council Member Salver informed Mr. Sanchez that announcements regarding election qualification are accessible on the Town's website.

Frances Neuhut, 1060 Kane Concourse, came forward and said that it is awful to vote early in a short election. She also mentioned that the candidates don't take part in the forum called Meet the Candidates. She voiced disapproval to the elections being held in April rather than in November and to the Council's refusal to impose council office terms.

PUBLIC COMMENT CLOSED

ACTION: Council Member Salver made a motion to approve the ordinance on first reading. Council Member Yaffe seconded the motion, and it passed on 5-0 poll vote. Council Member Bruder was absent from the dais.

8. **Consideration and Approval** of an ordinance on First Reading amending Sections 5-5 of the Town's Code entitled "Construction Site Operations" to create a new subsections 5-5.2, 5-5.3 and 5-5.4 23- 12(12) related to lot regrading and revegetation during demolition and construction activities, and during periods of a site being vacant in anticipation of future construction, and to amend Section 24-15 for similar reason. Introduced by Council Member Robert Yaffe.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, TO AMEND CHAPTER 5 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED BUILDINGS AND CONSTRUCTION CODE; AMENDING SECTION 5-5 ENTITLED CONSTRUCTION SITE OPERATIONS TO MODIFY SECTION 5-5(e) RELATED TO THE VEGETATION MAINTENANCE; CREATING NEW SECTION 5-5.2 ENTITLED REGRADING AND REVEGETATION PLAN; CREATING NEW SECTION 5-5.3 ENTITLED REGRADING AND REVEGETATION BOND; CREATING NEW SECTION 5-5.4 ENTITLED FAILURE TO REGRADE AND REVEGETATE SITE; AMENDING SECTION 24-15 ENTITLED RESPONSIBILITIES OF OWNERS OF VACANT BUILDINGS, VACANT STRUCTURES AND VACANT OR UNIMPROVED LOTS; CREATING NEW SECTION 24-15(j); PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Council Member Yaffe moved the item to the floor, and Council Member D'Amico seconded the motion.

Council Member Yaffe explained that he sponsored this ordinance because the town's current ordinance does not allow for regulation of construction sites. He also mentioned that there are some vacant houses on the west island that are kept up while waiting for development. Other properties, on the other hand, are quickly demolished, leaving the site uncared for and unattended. He voiced displeasure with developers' disregard, believing that they ought to be held responsible for property maintenance if they demolish a site before obtaining a permit and moving forward with redevelopment. He also mentioned that during the most recent special magistrate hearing, a property was fined approximately \$35,000 and made good on the violation. However, he believed that Code Enforcement ought to revisit the site, since the vegetation had grown above three feet in height once more. He felt that the town would help to uphold the standards with this ordinance.

Council Member D'Amico said she thought this ordinance was a really good idea. Vice Mayor Fuller expressed concern about the proposed language in the ordinance that states "if for any reason construction activity ceased for a period of more than 90 days." He thought the term was too broad, and developers could hammer a nail on the property every three months and get around the ordinance. He requested advice from the Council to avoid any loopholes. He also expressed concern about the word "may" in the ordinance, saying it sounds arbitrary. He suggested that it be changed to "shall." The Council and the Town Attorney agreed to shorten the period from 90 to 60 days and to remove the word "may" and replace it with "shall."

Council Member Salver inquired as to what will be done to prevent developers from abusing this ordinance. Vice Mayor Fuller explained that they will be unable to do so, because the date requirements have changed. Town Manager Lasday asked if this ordinance could be scheduled for second reading at the Special Council Meeting on June 28th. Town Clerk Hamilton advised that the town must provide a ten-day notice for second reading. It was agreed the ordinance would be brought up for second reading at the August meeting, or in July, if another meeting was scheduled.

PUBLIC COMMENT

Dave Sanchez, 1080 94 Street, came forward and stated that during Hurricane Ian last year, a neighboring property to his home had bulk trash, which he reported to the town; he observed that the neighboring property owner had ignored the notices. He explained that during hurricane season bulk trashing is extremely dangerous. He proposed that the town shorten the time given to property owners on "notices" to correct the violation.

PUBLIC COMMENT CLOSED

Vice Mayor Fuller amended the motion to pass the ordinance on first reading with changes to shorten the period from 90 to 60 days and to replace the word "may" with "shall". Council Member Yaffe seconded the motion, and all voted in favor.

ACTION: Vice Mayor Fuller made a motion to approve the ordinance on first reading with changes to shorten the period in Section 5-5(e) from 90 days to 60 days and to replace the word "may" to "shall." Council Yaffe seconded the motion, and it passed unanimously on a poll vote.

9. **Consideration and Approval** of an ordinance on First Reading amending Section Article 1, Sections 5- 6 of the Town Code pertaining to development fees to modify Article I, Sections 5-6 entitled "Development Fees, Permits – Required, Fees to be Paid; Penalty of Noncompliance" to modify the provision related to Town actions for noncompliance. Introduced by Council Member Robert Yaffe.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO BUILDING AND CONSTRUCTION ACTIVITIES; AMENDING CHAPTER 5 ENTITLED BUILDINGS AND CONSTRUCTION, ARTICLE I, SECTION 5-6 ENTITLED DEVELOPMENT FEES, PERMITS – REQUIRED, FEES TO BE PAID; PENALTY FOR NONCOMPLIANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Council Member Yaffe moved the item to the floor, and Council Member Bruder seconded the motion.

Council Member Yaffe explained that this proposed ordinance is a companion to the previous ordinance. He wanted to make certain that if a violation occurs, a Stop Work Order would be issued until the violation is paid. He mentioned a property that had a permit to change the windows but instead did other work without following the proper procedures, and continued to work on the property, even after a "Stop Work Order" was issued. This ordinance forbids such an occurrence. If a "Stop Work Order" is issued, the issuance of a permit will be suspended until the fine is paid.

Vice Mayor Fuller concurred with Council Member Yaffe and proposed eliminating the phrase "as determined by the building official" from Section (e) and substituting the word "may" for "shall." Council Member Yaffe questioned who would decide that if the sentence was commuted. The Town Attorney and Council agreed that "as determined by the building official" would remain, "may" would be replaced with "shall" and the comma after "achieved" will be removed.

Vice Mayor Fuller moved to amend the motion to replace the word "may" with "shall", to remove the comma after the word "achieved", and to keep the language "as determined by the building official". Council Member Bruder seconded the amended motion, and all voted in favor.

ACTION: Council Member Yaffe made a motion to approve the ordinance on first reading with changes to Section E to replace the word "may" with "shall", to remove the comma after the word "achieved", and to keep the language "as determined by the building official." Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

DEFERRED ITEMS:

10. **Request for approval** of the location of a temporary Sales Center at 10301 East Bay Harbor Drive in connection with the development of the properties at 9781 and 9927-9955 East Bay Harbor Drive, by 9781 Bay Harbor Development LLC, 9955 Bay Harbor Development LLC. Duration of the sales center is expected through March 31, 2026.

Council Member Bruder moved the item to the floor, and Council Member D'Amico seconded the motion.

Joe Ruiz, 320 Miracle Mile, Coral Gables, Florida representing applicant was accompanied by Alex Turnofsky who was present on behalf of ownership. Mr. Ruiz reported that on May 5, 2023, he appeared before the Town Council to request permission to use the current sales center at 10301 East Bay Harbor Drive for the three projects—9955, 9781, and 10301 East Bay Harbor Drive—all of which are being overseen by the same development group. During the meeting, issues pertaining to the demolition costs and the responsibilities of the sales center's previous user were discussed. The Chief Building Official examined the three quotes his client had received. The average price was \$17,500. He offered to replace the demolition with a \$17,500 donation to the town.

Council Member D'Amico expressed appreciation for the town receiving something in return, as she had never heard of an applicant giving back to the community. Vice Mayor Fuller clarified that, as per the previous meeting, the Council had a contract with the previous owner that required them to demolish this sales center. While he recognizes the necessity of extending the agreement, he wanted to guarantee that the town would receive the same advantages as per the original agreement. He stated that having a removal date is his biggest worry.

Council Member Bruder asked the Applicant to contribute \$52,000, or \$17,500 times three, as there will be three projects promoted in the sales center. She stated that despite not having a permit, they put development signs on the property. She said she would accept the request if they paid \$52,000. Mr. Ruiz responded that the \$17,500 was determined using a set of objective standards that were covered at the previous meeting.

Council Member Bruder replied that they were setting up a sales center for three projects and that the original developer was going to pay \$17,500 for one project. Mr. Turnofsky clarified there are two projects. Vice Mayor Fuller clarified that the sale center's agenda calls for two projects, with the potential for three. Mr. Ruiz clarified that although the Design Review Board had since approved the project for 10301, the initial request was for two with the possibility of three. Council Member Bruder stated that the applicant was requesting a second exception and that the inconvenience to the town's citizens is valued at over \$17,500.

Council Member Salver stated that comments from the previous meeting were to approve or not approve. He said he felt the entire concept of the cash equivalent was correct. He inquired of the Town Manager whether she had received any complaints about the sales center and its impact on the surrounding properties. Town Manager Lasday responded that she had an encounter with trucks entering that area but was not aware of any complaints about the sales center. Mayor Tricoche stated that residents were upset, and she was questioned about who allowed sale centers in the Residential District. Council D'Amico stated that if the town requires other developers to have their sales centers on the second floors of the business district, then the town should be consistent.

Mayor Tricoche stated that she does not support this request and believes sales centers do not belong in residential areas.

Mr. Ruiz proposed a one-year payment of \$17,500, with the option to renew annually at the same rate. Mayor Tricoche conveyed her displeasure and reminded the Council that they may be requesting permission to operate a sales center in a residential neighborhood for three years. Vice Mayor Fuller said that while he did not object to the contract being extended, it would not be for three years.

Council Member Bruder made a motion to approve the request subject to the requirements that the sales center be open for two years and that the applicant pay \$52,000 (\$17,500 multiplied by three) for each year that they use the sales center. There was no second to the motion.

Vice Mayor Fuller moved to amend the motion to approve the request with the conditions that the Applicant must pay \$17,500 to the town, pay the code violation first, and to allow the sales center for a year without an extension. Council Member Yaffe seconded the motion.

PUBLIC COMMENT

Dave Sanchez, 1080 94 Street, came forward and said that at a prior meeting, the Council had decided sales center should be located on the second floor or higher of buildings in Business District. Council Member Yaffe clarified that the ordinance was approved on first reading, but not on second reading.

Mr. Sanchez requested that the Council deny the request, stating that residents do not want a sales center in the Business District, much less in the Residential District.

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the rejection of this request by the Council, in contrast to the approval of other requests for sales centers, was bias.

PUBLIC COMMENT CLOSED

ACTION: Council Member Bruder made a motion to approve the request subject to the requirements that the sales center be open for two years and for the Applicant to pay \$52,000. There was no second to the motion.

ACTION: Vice Mayor Fuller made a motion to approve the request with the condition that the Applicant pays the code violation first, that the sales center be allowed for one year with no extension, and that the Applicant pays \$17,500. Council Member Yaffe seconded the motion, and it failed 3-3 on a poll vote with Mayor Tricoche and Council Members Bruder and D'Amico opposing. Vice Mayor Fuller and Council Members Salver and Yaffe voted in favor.

11. **Discussion** regarding the addition of a Mobile Command Post in the 2023/2024 Capital Improvement Plan. Sponsored by Council Member Stephanie Bruder.

Council Member Bruder stated that she has been in discussions with Chief Noel and other Police Chiefs about establishing a command post. The surrounding cities do not have one, and BHI is the only town with a location for one. She explained that one is required during the hurricane season, especially if there is extensive damage to the island. She also stated that FEMA would reimburse the town for the cost in the event of an emergency and encouraged the Council to consider getting one.

Chief Noel stated that the command post is used not only for hurricanes but also for critical incidents such as the Champlain Towers. The mobile command post can be funded by the Florida Sheriff's bid, which is how most agencies fund them.

Council Member Salver inquired about the location to store the command post. Chief Noel suggested it be stored in North Miami or on one of the municipal lots. Vice Mayor Fuller stated that he had no issues negotiating with North Miami to store the command post at their facilities. Chief Noel advised that the command post should be moved slowly and out of the flood plain during a hurricane.

Town Manager Lasday asked which municipalities in the surrounding area have a command post. Chief Noel responded that the nearest municipalities with one are the City of Miami Beach and North Miami Beach. Town Manager Lasday informed the Council that when a command post is required, the County will provide it, if the municipality does not have one. She mentioned if the town had a command post, the town would be asked to lend it out. Vice Mayor Fuller stated that this investment is an asset, and he would support it, if the Town Manager could budget it through the Causeway Fund. Town Manager Lasday asked if she could provide an update within a week.

Mayor Tricoche asked the Council Members if they were in agreement to consider the command post as a potential budget item for August. Town Manager Lasday replied that since they are still working on the budget, she will have more details in a few days.

It was the consensus of the Council to defer the item to August.

12. **Discussion** regarding the requirements of the Design Review Board submittal package. Sponsored by Council Member Teri D'Amico.

Council Member D'Amico moved the item to the floor, and Vice Mayor Fuller seconded the motion.

Council Member D'Amico explained that when she was reviewing the items submitted to the Design Review Board ("DRB") for approval, she noticed that applicants did not include all of the required information required for the Board to make a decision. She researched regulations of several nearby cities and discovered that they all require section drawings and elevations of adjacent properties. She wished to include similar regulations as a requirement when submitting applications to the DRB.

The Council was informed by Town Attorney Geller that he is working on a proposed ordinance that would include the recommendations made by Council Member D'Amico. It will be presented at the following regular council meeting.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and said that if the Town Planner's report on the 1270–1290 East Bay Harbor Drive project indicates that the design is within code, then the project as a whole ought to be within code. They had requested 73 lifts and 36 TDRs. She believed that the DRB should make clear what it is approving when projects are submitted to them.

PUBLIC COMMENT CLOSED

Council Member Bruder stated that the developer for the request in Item 10 requested a reconsideration and that the Council hear the reconsideration, so that they do not have to return. Town Attorney Geller advised that the Council must make a motion to reconsider, and someone on the prevailing side of the vote may move to have the item reconsidered by motion. If the Council approves the motion for reconsideration, it simply means that the matter will be brought back for discussion. Council Member Bruder moved to reconsider the motion.

Mayor Tricoche stated that it was 10:30 p.m. and the agenda might not be completed if the reconsideration was handled. Vice Mayor Fuller expressed concern that people who might have wanted to speak on the subject were no longer present. Council Member Bruder requested that the reconsideration be added to the next agenda. Council Member Yaffe stated that because it was not approved, they had to remove the structure. He asked if the structure will be allowed to remain, if the Council allowed them to return in August.

Chief Building Official Mike Mesa came forward and said that since the structure wasn't approved, code enforcement was put on hold while the Council decided whether to approve or reject it. He asked Mr. Ruiz to state their intentions for the structure. Council Member D'Amico asked if he would advise delaying enforcement until after the August meeting.

Mr. Mesa proposed giving the developer a two-month extension so they could occupy the space lawfully. Mayor Tricoche requested verification that the structure was there unlawfully. Mr. Mesa gave his confirmation. He explained that the building's approval for the Onda project came with an expiration date that was later changed to May 2023. Vice Mayor Fuller questioned the reason for the holdup in enforcement. Council Member Yaffe clarified that the developer did, in fact, arrive in May, just before the deadline. Mr. Mesa stated that the developers had been asked to return with some changes, which is why they were here. Mayor Tricoche added that the developers came back with something presumptive and were already using it without permission.

Council Member Yaffe stated that if anyone on the Council was interested in hearing the proposal, he will not request that the structure be demolished. He raised a threshold concern and suggested deferring the item until they could reconsider it.

Mr. Mesa confirmed that there is enforcement on the property. He said they have been cited for a violation and the Building Department may be required to issue a cease-and-desist order. Council Member Yaffe added that if the time limit has expired, they should not be using it as a sales center. However, he did not believe they should wait until August for a reconsideration. He suggested possibly hearing the matter at the June 28th Special Council meeting.

It was the consensus of the Council to allow the structure to stay in place until the reconsideration was heard, but the Applicant had to stop using it as a sales center. The Council will continue to hear the other items on the agenda and return to this item, if time permits.

13. **Discussion and Consideration** of Possible Action regarding a study of the perimeter of Bay Harbor Islands East Island's Seawall shoreline. Sponsored by Council Member Teri D'Amico.

Mayor Tricoche moved the item to the floor and Council Member Bruder seconded the motion.

Council Member D'Amico claimed that the Council was forced to rely solely on the study supplied by the developers when the Onda project requested four variances. She recommended that the Town have a study of the seawall done, rather than depending on developers. She asked the Council if the seawall study could be added to the budget. She further questioned the Chief Building Official about whether the Onda seagrass study applied to the entire island. If so, she would like a uniform dock standard to be established. Both Council Member Bruder and Mayor Tricoche expressed agreement with the recommendation to include this study in the budget. Vice Mayor Fuller said he would like to know the cost before adding it to the budget.

Chief Building Official Mesa clarified that the study conducted in 2018–19 was limited to the seawall and did not consider the bay. DERM conducts environmental studies, not the Town. He clarified that Onda was required by DERM to conduct an environmental study at the time of their dock application. He asked Council Member D'Amico about the study she is attempting to complete, noting that the Town has limited resources. In response, Council Member D'Amico stated that she wants to conduct research on the seawall, sea grass, and water quality. Vice Mayor Fuller responded that some of the items she mentioned are county property. Council Member Yaffe inquired whether they could provide a determination of what the Town is permitted to do. Mr. Mesa responded that he read in the Town Charter that the town owns submerged land surrounding the town, but the town may not have jurisdiction over the seagrass. He said those studies are costly, because they necessitate divers surveying the seagrass. Council Member D'Amico explained that if the study reveals that a portion of the seagrass has decayed, the town can be proactive and rebuild it.

Mayor Tricoche clarified that knowledge of the surrounding area as well as the seawalls is necessary to develop a sustainable dock program. She requested that the Council think about searching for a price. Vice Mayor Fuller said the town is currently studying the seagrass near the Causeway bridge, and she would not have the results.

PUBLIC COMMENT

Frances Neuht, 1060 Kane Concourse, came forward and stated that the seawall needs to be repaired and the town is not up to code. She recommended replacing the seawalls before replacing the seagrass.

PUBLIC COMMENT CLOSED

It was the consensus of the Council for the Town Manager to provide them with several quotes to have the studies completed and included in the budget.

10. **Request for approval** of the location of a temporary Sales Center at 10301 East Bay Harbor Drive in connection with the development of the properties at 9781 and 9927-9955 East Bay Harbor Drive, by 9781 Bay Harbor Development LLC, 9955 Bay Harbor Development LLC. Duration of the sales center is expected through March 31, 2026.

Item 10 was being discussed for purposes of reconsideration.

Mayor Tricoche requested advice from the Town Attorney regarding Council Member Bruder's move for reconsideration. Town Attorney Geller informed the Council that the motion would be to reconsider the matter at a later meeting, to forbid the developer from using the property as a sales center, and to give staff instructions not to order the sales center's to be demolished until the Council heard the reconsideration.

ACTION: Council Member Bruder made a motion to reconsider the motion. Council Member Yaffe seconded the motion, and it failed 2-4 on a poll vote with Council Members D'Amico and Salver, Vice Mayor Fuller and Mayor Tricoche opposing. Council Members Bruder and Yaffe voted in favor.

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

14. **Consideration and Approval** of a request from the Florida League of Cities to designate one Voting Delegate for this year's Annual Business Session, during the 97th Annual Conference from August 10-12, 2023 at the Hilton Orlando Bonnet Creek in Orlando, Florida. Enclosed is correspondence from the Florida League of Cities.

ACTION: Council Member Yaffe made a motion to nominate Council Member Isaac Salver as the voting delegate. Vice Mayor Fuller seconded the motion, and it passed unanimously.

15. **Consideration and Approval** of an extension of the Lease Agreement between the Sunshine Gasoline Distributors, Inc., and the Town of Bay Harbor Islands for operation of a motor fuel service station and convenience store at 1501 Broad Causeway, Bay Harbor Islands, Florida.

Council Member Yaffe moved the item to the floor and was seconded by Council Member Bruder.

Mayor Tricoche questioned whether the cost of the lease should be determined by fair market value. Town Attorney Geller responded that while the Council could extend the lease, a long-term extension was being discussed. The Town has until the end of the fiscal year to work out the terms of the proposed lease with the tenant. Additionally, Council Member Yaffe stated that he wanted to keep the gas station and assumed this was being done to give them more time to turn the bridge placement. Vice Mayor Fuller clarified that since the town requires flexibility for the bridge, this will be a special agreement and that a fair market value will not provide it. Thus, the town gave less than market value in return for that flexibility.

Council Member Bruder clarified that the extension is only being done while the town decides how to move forward. Vice Mayor Fuller clarified that because this is a unique property and the circumstances are highly unusual, it will be nearly impossible to ascertain fair market value. Council Member Salver stated that he does not think the same as the other Council Members. He clarified that the property could be used for something other than a gas station, because it has 360-degree views of the intracoastal waterway.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked if the bridge is going to be an extension.

Council Member Yaffe explained that the Council was not discussing the design of the bridge itself, but rather a lease extension for the gas station.

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion to approve the extension of the lease agreement. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

DISCUSSION ITEMS:

16. Discussion regarding penalties for noncompliance with Hurricane Preparedness regulations. Sponsored by Council Member Stephanie Bruder.

Council Member Bruder explained that the town has hurricane preparedness, but that developers do not follow the Town's requirements. She proposed raising the fines so that they could comply during hurricane preparations. She requested that staff investigate the matter and return the item in August with their findings.

There being no further business the meeting adjourned at 11:58 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A SPECIAL COUNCIL MEETING**

A Special Meeting of the Town Council was held on Wednesday, June 28, 2023, at 6:06 p.m.
Upon roll call the following members responded:

Mayor Elizabeth Tricoche	
Vice Mayor Joshua Fuller	Council Member Stephanie Bruder
Council Member Teri D'Amico	Council Member Molly Diallo
Council Member Isaac Salver	Council Member Robert Yaffe

1. **Consideration and Approval** of a Resolution regarding Amendment No. 2 to the FY 2022-2023 Budget.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF BAY HARBOR ISLANDS, FLORIDA, APPROVING
BUDGET AMENDMENT NO. 2 FOR THE ANNUAL BUDGET
FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2022
AND ENDING SEPTEMBER 30, 2023, ADJUSTING
REVENUES AND EXPENDITURES OF FUNDS
ESTABLISHED AND REFLECTED IN EXHIBIT "A"
ATTACHED HERETO; PROVIDING FOR INCORPORATION
OF RECITALS; PROVIDING FOR IMPLEMENTATION; AND
PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Tricoche moved the item to the floor, and Council Member Yaffe seconded the motion.

Council Member Bruder requested that remaining monies from pending 2023 projects or items be rolled over on top of what is already allocated for the following year. Finance Consultant Gerrie Lazarre, Tri-Merge explained the process and advised that the carryforwards can be done moving forward.

Council Member Bruder asked Ms. Lazarre if the Town was over budget, and if the monies allocated for this year that hasn't been spent can be rolled over to the next fiscal year. Ms. Lazarre explained that she did not have an answer as the audit was just received yesterday. They will reconcile the numbers that have been posted for this fiscal year thus far, which will be taken into consideration to see whether or not the town was over or under budget. Mayor Tricoche asked if an answer could be expected by August. Council Member Bruder raised a concern that because the budget was prepared based on spending money for next year, based on having money this year, if there is overspending and the budget was in the negative, the money would not be accurate. Ms. Lazarre advised that they will look at the numbers, finalize them, and submit the final numbers for review.

Council Member Salver asked Ms. Lazarre if anything delayed the issuance of the Audit Report, since the Council typically receives a draft by the end of the third quarter. Ms. Lazarre responded that the Town went through a transition with the resignation of the former Finance Director in April. When Tri-Merge took over, they also had to take over a few projects that he was working on. The Auditors were working with multiple agencies, but because of the transition, they are now having to accommodate time to meet with them to perform and conclude the audit. She continued explaining that she met with the auditors regarding the stage of the budget. She mentioned that they also worked on some of the pending items while at the same time working on the budget. Council Member Salver asked the Town Manager to provide additional information for the delay of the audit. Town Manager Lasday explained that the previous consultant failed to prepare reports that were needed for the audit. Tri-Merge had to prepare those reports in order to proceed with the audit.

PUBLIC COMMENT

Frances Neuht, 1060 Kane Concourse, came forward and stated the Council was amending the budget missing plus/minus \$6 Million. She inquired about the location of the TDR monies that the town received. She raised a concern regarding removal of municipal parking spaces. She asked if the Council would continue to approve non-profit organizations in the Business District as opposed to restaurants or stores.

PUBLIC COMMENT CLOSED

ACTION: Mayor Tricoche made a motion to approve the resolution. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

2. **Consideration and Approval** to purchase electrical materials from Graybar in the amount of \$100,857.04 in connection with the installation of a new FPL electrical pole and transformer on the southwestern portion of the parking lot, to accommodate the temporary Town Hall in the 95th Street Parking Lot. This purchase will be made under the emergency procurement provisions, pursuant to Section 2-1.3 of the Town Code.

Council Member Yaffe moved the item to the floor, and Council Member Bruder seconded the motion.

Council Member Salver asked if this expense was part of the originally approved projection. Public Works Director Jason Atkinson came forward and stated that the amount is to purchase only the supplies for the installation of a new FPL electrical pole and a transformer for the southwestern portion of the parking lot. He explained that Graybar is one of the best suppliers, and that their competitors couldn't outbid their quote. The original electrical plans did not include an alternate sheet that dealt with the generator. This alternate plan will add an additional cost of about \$120,000 for the purchase of a transfer switch, that has to be approved by the Town Council in the near future.

Council Member Bruder asked if this item was budgeted and whether he anticipated the cost of the parts to be over \$100,000. Mr. Atkinson explained that the grant money that will be received for the generator can be used towards this expense, and he anticipated the cost of the materials to be about \$40,000 not over \$100,000. He explained that they will be installing a mobile generator, and the installation will be done in-house by the Town's electrician.

Mayor Tricoche asked how much the grant is covering. Town Manager Lasday explained that the grant can be used towards electrical and a generator to service Town Hall and the Police Department. Mayor Tricoche clarified that the Town is fronting the money, which will be reimbursed once the grant funds are received. Town Manager Lasday explained that the grant has not been signed yet; it will go into effect after July 1st. She said she expects to have the grant agreement for the August Regular Council Meeting.

Vice Mayor Fuller raised concern that the warranty could be voided due to some of the work being performed in-house. He asked if procedures were in place to prevent any invalidation of the warranty. Mr. Atkinson responded that the work will be performed by the Town's licensed electrician and will still need to pass inspection. He said he was confident the electrician could handle the installation. He added that an outside electrician may be needed to assist with the generator and the transfer switch. Vice Mayor Fuller reiterated his concern to Mr. Atkinson to ensure the warranty is secured to prevent its invalidation.

Council Member Bruder requested a timeline report for this portion of the project, more specifically a step-by step process to ensure that every step is being inspected as an extra layer of caution.

Building Official Mike Mesa came forward and stated that every work performed will be inspected. He said the Town may act as its own contractor with a limited expenditure of up to \$200,000, in accordance with Florida Statutes, Chapter 49.

There was extensive discussion about the concern of surpassing the threshold amount, whether the Town should perform the work in-house, the cost of the materials, and the unanticipated cost for the transfer switch for the generator that would cost over \$200,000. Council Member Bruder said that she was not comfortable with having the work performed in-house given the proposed expenditure limit. She wanted to ensure that the project was done correctly, because the staff will be in the modulars for a while. Town Attorney Geller suggested that the Town hire a contractor to perform the work. Town Manager Lasday requested approval from the Council to issue an RFP.

Council Member D'Amico thanked Mr. Atkinson for doing the research.

It was the consensus of the Council for the Town Manager to issue an RFP for the project.

Council Member Salver asked about the oversight of the additional page that precipitated the need for additional funds for the project. Mr. Atkinson explained that Chen Moore provided 90% of the plans so it could come back to the building department for comments and review. The plans included a mark on the line diagram of where the generator would be. However, upon reviewing the plans, they realized the work entailed more than what the plans showed, which resulted in the need for additional funds to cover the cost of the generator. Council Member Salver was concerned about this oversight and that other projects not our own might have omitted information, and that a \$250,000 omission on a project doubles the budget on the temporary town hall. Town Manager Lasday advised that \$300,000 was budgeted for the modulares which remains within budget. Council Member Yaffe stated there was a mistake and the item cannot move forward as it is, because it exceeds the limit and will need to be handled differently. He said he understood things happen, but wanted to make sure there were no future mistakes. He suggested moving on with the matter.

Council Member Bruder suggested handling the matter under an emergency basis and request three price quotes, rather than issuing an RFP. Town Attorney Geller disagreed with classifying a temporary town hall as an emergency. Council Member Bruder responded that the matter was an emergency because the staff were displaced. Vice Mayor Fuller stated that he did not oppose classifying this project as an emergency. Council Member Bruder asked Public Works Director Atkinson to maintain open communication with Building Official Mesa to avoid any delays.

Council Member Yaffe amended his motion to authorize the Town Manager to proceed with the purchase on an emergency basis rather than putting out an RFP and to obtain a minimum of three bids. Council Member Bruder seconded the motion, and all voted in favor.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and expressed disagreement with the Town adding an FPL pole in the Business District. She said that FPL poles were aesthetically unappealing.

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion authorizing the Town Manager to proceed with the purchase on an emergency basis, rather than putting out an RFP and to obtain a minimum of three price quotes. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

3. **Consideration and Approval** of a proposal in the amount of \$99,895.00 from Kimley-Horn and Associates, Inc. for drainage improvements south of Kane Concourse on West Bay Harbor Drive.

Council Member Yaffe moved the item to the floor, and Council Member Bruder seconded the motion.

Council Member Yaffe stated that he had conversations with residents who have significant issues and are frustrated. He acknowledged that this project would take some time, but the sooner they start, it would alleviate a lot of the flooding issues.

Council Member Salver stated that he rides his bike along West Bay Harbor Drive and felt that there are small sink holes around the Altair. Town Manager Lasday responded she will have the area inspected.

Town Attorney Geller advised the Council that an amended motion is required because he needs to edit the contract before it is executed.

Council Member Yaffe amended the motion to approve the proposal “substantially in the form attached hereto”. Council Member Bruder seconded the motion, and all voted in favor.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the Council has requested flood gates on Kane Concourse. She explained that the flood gates are high and are not leveled with the sidewalk.

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion to approve the proposal with the added language “substantially in the form attached hereto”. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

There being no further business the meeting adjourned at 6:48 p.m.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A SPECIAL COUNCIL MEETING

A Special Council Meeting was held on Thursday, July 27, 2023 at 6:30 p.m. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Council Members responded:

Vice Mayor Joshua Fuller

Council Member Stephanie Bruder (Zoom) Council Member Teri D'Amico

Council Member Molly Diallo Council Member Isaac Salver

Council Member Robert Yaffe

Mayor Elizabeth Tricoche was absent.

1. Presentation of the Town's Comprehensive Annual Financial Report for the year ended September 30, 2022 by Town auditors Marcum LLP.

Moises Ariza reported that the Auditor's Report was released in June. He discussed highlights of the report as follows: Page 1 regarding the Independent Auditors Report- There was a change in the auditing standards that requires the Opinion's Paragraph to be first in the report. He reported that the Town received a "Clean Opinion". Page 5 addressed Management Discussion and Analysis which compares FY 2022 activities versus FY 2021 activities. Page 18 pertained to the Statement of Net Position (equity) of the town of which Capital Assets is the largest followed by Cash on Hand. Cash on Hand as of September 30, 2022 was north of \$37 Million. The Fund Balance as of yearend was north of \$92.7 Million. From the Net Position Categories, a significant amount is unrestricted, \$14.1 Million in Governmental Activities and nearly \$28 Million in Business Type Activities. These are available resources for ongoing operations of the Town. Statement of Activities, inflows and outflows regarding the fiscal transactions for the year, which starts off with expenses and net of program revenues. The change in Net Position for the Town started off at \$82.5 Million. The change in Net Position was at positive \$10.1 Million; the ending position for both Governmental and Business type activities is \$92.7 Million. Modified Accrual Statements are the financials that relate to the footnotes which highlight certain activities of the Town. Page 29 includes some of the key footnotes. Page 44 addresses the Investments of the Pension Plan, which dictates the composition of the Investment Portfolio, which includes US Treasuries, Government Obligations, some Equity Securities, and some investments that are valued at net asset value. Page 45 stated that there are no Unfunded Commitments of the Investment Portfolio as of September 30, 2022. The investment portfolio was liquid as of yearend. Page 51 concerns Long Term Debt Liabilities and Amortization Schedule for every debt/security the town has. Following the financial statement's footnotes on Page 70, the General Fund original budget as compared to the final budget net of any budget amendments is reflected. There was a variance to reflect if there was any overspending or any unapproved transaction above the approved budget. No amounts were determined to be above what was approved under the budget document (Page 71). Compliance Section, Pages 98 has the Yellow Book Report (Government Auditing Standards Report). Internal Control Deficiency is defined; there are two sets known as material weakness or significant deficiencies. No deficiencies were identified. Page 99 refers to the Compliance Paragraph.

Mr. Moise explained that they performed a financial audit to ensure the amounts throughout the document are complete and accurate and that the uses of the financial statements can rely on those numbers. The auditors are also required to perform a Compliance Audit. There are certain Florida Statutes regulations, rules, and law that the town must follow, so they looked at both financial and compliance aspects. As outlined on Page 99, the results of their test did not disclose any instances of noncompliance.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked why the audit report was being presented by the same auditor. She read information from the Town Charter and the Florida Statutes regarding the process for providing financial statements, and information from a FY 2022 Financial Report Letter.

PUBLIC COMMENT CLOSED

Consideration and **Approval** of a Resolution adopting the proposed Millage Rate for FY 2023-2024 and setting the dates and times for the Tentative Budget Public Hearing and the Final Budget Public Hearing, pursuant to FS 200.065. It is suggested the Tentative Budget Hearing be held on September 13th at 6:30 p.m. and the Final Budget Hearing on September 27th at 6:30 p.m.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, DETERMINING THE TOWN'S PROPOSED MILLAGE RATES AS REQUIRED BY SECTION 200.065, FLORIDA STATUTES, AND SETTING THE DATE, TIME, AND PLACE OF PUBLIC HEARINGS TO ADOPT THE TENTATIVE AND FINAL MILLAGE AND BUDGET FOR FISCAL YEAR 2023-2024; DIRECTING THE TOWN CLERK AND THE TOWN MANAGER TO FILE THIS RESOLUTION WITH THE MIAMI-DADE COUNTY PROPERTY APPRAISER; AUTHORIZING THE TOWN MANAGER TO CHANGE THE BUDGET HEARING DATES IF NECESSARY; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Diallo moved the item to the floor for approval of the 3.1728 proposed millage rate, and Council Member D'Amico seconded the motion.

Council Member Bruder requested that the Town Manager and the Assistant Town Manager review the Budget to see where expenses could be cut from all departments. Town Manager Lasday responded that at the last Council meeting a couple of items were added to the Budget, as requested by the Council. The Department Heads met with the Financial Consultants and worked on reducing the Budget. Council Member Bruder stated that there might be an impact on the Budget, and as such, the Town needs to look not just at equipment, but across the board without cutting services to the residents. The Town Manager advised she will review the budget once again to see if any expenses can be removed.

Vice Mayor Fuller stated that he would like the Budget to be reviewed once again to see if expenses can be reduced, because the Council can foresee “unforeseen expenses” in the next fiscal year.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and commented that it was confusing to the residents of the town when the agendas don’t include a section for public comment. She stated that the Council was setting a millage rate without the Town Planner’s presence. She said the Council previously approved underground parking, municipal parking prices, and was giving away easements and rights-of-way to developers and to the tax-exempt church. She complained that there are dangerous cracks on the bridges and about flooding. She asked where the TDR monies were, and what happened to donor properties bringing the properties up to code with the TDR monies.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and stated that the Council should cut their expenses by reducing travel. She mentioned that she doesn’t oppose Council Member Yaffe travelling to Tallahassee to advocate for the Town. She suggested salaries of staff should be reduced. She complained about the Police Department working in modulars and Town Hall being closed.

PUBLIC COMMENT CLOSED

Gerri Lazzarre, Tri-Merge, Finance Consultant, read the proposed millage rate of 3.1728 mills, which is 3.1728 one thousandth of the assessed property value within the town. She announced the current year roll back rate of 2.730559 as computed, which was 2.7306 per one thousandth assessed property value within the town. The percentage of the rollback rate was 2.730559, and the percentage increase between the rollback rate was .1620275. Deputy Town Attorney Skip Miller asked Ms. Lazzarre to provide the percentage rate increase between the millage rate and the rollback rate. Ms. Lazzarre entered on record the percentage rate as 16.202%.

ACTION: Council Member Diallo made a motion to set the proposed millage rate at 3.1728 mills. Council Member D’Amico seconded the motion, and it passed unanimously on a poll vote.

2. **Consideration and Approval** of an ordinance on Second Reading amending Sections 5-5 of the Town Code entitled “Construction Site Operations” to create new subsections 5-5.2, 5-5.3 and 5-5.4 23- 12(12) related to lot regrading and revegetation during demolition and construction activities, and during periods of a site being vacant in anticipation of future construction, and to amend Section 24-15 for similar reason. Introduced by Council Member Robert Yaffe.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, TO AMEND CHAPTER 5 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED BUILDINGS AND CONSTRUCTION CODE; AMENDING SECTION 5-5 ENTITLED CONSTRUCTION SITE OPERATIONS TO MODIFY SECTION 5-5(e) RELATED TO THE VEGETATION MAINTENANCE; CREATING NEW SECTION 5-5.2 ENTITLED REGRADING AND REVEGETATION PLAN; CREATING NEW SECTION 5-5.3 ENTITLED REGRADING AND REVEGETATION BOND; CREATING NEW SECTION 5-5.4 ENTITLED FAILURE TO REGRADE AND REVEGETATE SITE; AMENDING SECTION 24-15 ENTITLED RESPONSIBILITIES OF OWNERS OF VACANT BUILDINGS, VACANT STRUCTURES AND VACANT OR UNIMPROVED LOTS; CREATING NEW SECTION 24-15(j); PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Council Member Bruder moved the item to the floor and Council Member Yaffe seconded the motion.

Council Member Yaffe informed the Council that some minor changes were made to the ordinance after the first reading. He explained the purpose of the ordinance to ensure that property owners maintain their properties, if they make the decision to demolish the property prior to obtaining a Building Permit to do so.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and complained about Church by the Sea. She read a 2017 letter from the Representative of Church by the Sea regarding their intention to move from Bal Harbour to Bay Harbor Islands.

PUBLIC COMMENT CLOSED

ACTION: Council Member Bruder made a motion to approve the ordinance on second reading. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

3. **Consideration and Approval** of an ordinance on Second Reading amending Section Article 1, Sections 5-6 of the Town Code pertaining to development fees to modify Article I, Sections 5-6 entitled “Development Fees, Permits – Required, Fees to be Paid; Penalty of Noncompliance” to modify the provision related to Town actions for noncompliance. Introduced by Council Member Robert Yaffe.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN’S CODE OF ORDINANCES RELATED TO BUILDING AND CONSTRUCTION ACTIVITIES; AMENDING CHAPTER 5 ENTITLED BUILDINGS AND CONSTRUCTION, ARTICLE I, SECTION 5-6 ENTITLED DEVELOPMENT FEES, PERMITS – REQUIRED, FEES TO BE PAID; PENALTY FOR NONCOMPLIANCE; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Council Member Salver moved the item to the floor, and Council Member Bruder seconded the motion.

Council Member Yaffe stated that the ordinance is related to the one previously adopted. He explained that the ordinance would not allow an applicant to proceed with permitting, with an application before the Design Review Board, with meetings, and/or with site developments, if there were any outstanding fees owed to the Town.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked why Council Member Bruder was allowed to attend the meeting via Zoom, and not the public. She complained about Church by the Sea and its effect on tax increase for business owners.

PUBLIC COMMENT CLOSED

ACTION: Council Member Salver made a motion to approve the ordinance on Second Reading. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

ADJOURNMENT

There being no further business the meeting adjourned at 7:12 p.m.

MAYOR

ATTEST

TOWN CLERK

DRAFT

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR COUNCIL MEETING**

A Regular Meeting of the Town Council was held on Tuesday, August 8, 2023, at 7:20 p.m.
Upon roll call the following members responded:

Mayor Elizabeth Tricoche
Vice Mayor Joshua Fuller Council Member Stephanie Bruder
Council Member Teri D'Amico Council Member Molly Diallo
Council Member Isaac Salver Council Member Robert Yaffe

SPECIAL PRESENTATION:

3. Introduction of New Police Officer Jesse Whitt

Lieutenant Locke introduced Officer Whitt and Chief Noel administered the Law Enforcement Oath of Office to him.

2. Ruth K. Broad Student of the Year - Lara Schamy

Mayor Tricoche and Council Member Diallo gave a brief introduction and presented Ms. Schamy, (who was accompanied by her parents) with an award.

1. The Honorable Senator Shevrin D. Jones

The Honorable State Senator Shevrin D. Jones thanked the Council for traveling to Tallahassee to advocate for the town's needs and concerns. He explained that the district had a \$21 million dollar surplus. He reported that Bay Harbor Islands requested a \$250,000 grant for ejector pumps and manhole replacement, which the Governor approved. He announced that Committee week will begin on October 9th, kicking off the legislative funding request as they prepare for the legislative session in January. He suggested the Council look for items that require funding as they prepare to hold their legislative session, because he is aware of the dollars that are readily available and do not require appropriation and those that do. He suggested that if the Town is dealing with water pumps or sea level rise issues, for example, they should collaborate to help get funding through the resiliency program, so that there is no need to go through the appropriation process and risk the Governor vetoing the request. He discussed Senate Bills 196, 290, 490. He mentioned he will be holding meetings in the Surfside chambers with Senators Bradley and Pizzo to discuss the condo bill and property insurance on September 26, 2023, a Gun Violence Town Hall on August 29, 2023 at 6:30 p.m. at the Betty T. Ferguson Recreational Complex to educate residents about gun safety, and a legislative update/listening session to present the bills he plans to push forward as the Legislature prepares to go to their next session, budget items the Town Council is pushing for, and to listen to residents' concerns. He urged the public to submit any bills or ideas they may have for Tallahassee.

Council Member Salver asked Senator Jones about the importance of the Council going to Tallahassee to lobby for the town. Senator Jones stressed the importance of Council Members lobbying in Tallahassee on behalf of their constituents, and recommended they go during Committee Workshops or at the start of the sessions.

Town Attorney Geller and Senator Jones discussed the surplus in Tallahassee from the federal government's American Rescue Plan. Senator Jones said he believed a certain amount will be used in South Florida, but he was unsure where the funds would be allocated. He suggested that the town and his office approach Secretary Miller about the bridge issues to receive funding.

Council Member Yaffe inquired about the deadline for using the funds before returning them. Senator Jones stated that he wasn't certain, but he believed the funds had to be spent before the next election; he would double-check and respond.

Vice Mayor Fuller thanked Senator Jones for his efforts. The Vice Mayor mentioned the 15% rule for bridge funding and stated that he would like to discuss the matter further with him. Senator Jones suggested that, even if the meeting must be publicized, they should schedule a meeting with Council Members and Secretary Miller to discuss the bridge. Town Manager Lasday stated that she met with Secretary Miller, who has been fantastic.

The Council thanked Senator Jones for his presence and for his assistance with the grants for the Town.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Mayor Tricoche moved up Items #11 and #17.

TOWN MANAGER'S REPORT:

Town Manager Lasday reported on the following items:

- Clean Up Day scheduled for Sunday, August 13, 2023, at 7 a.m.
- Broad Causeway Bridge meetings: an in-person workshop on September 26, 2023, and a virtual workshop on September 28, 2023
- Budget Meeting scheduled for September 27, 2023

Town Manager Lasday reported that the Freebee program has been a success. Council Member Bruder stated that the Town may need to add another Freebee car because the wait time has increased. Mayor Tricoche requested that the Town Manager review the geo-footprint to assess the Town's options.

Vice Mayor Fuller suggested a clause be included to allow for an additional car. The Town Manager responded that the agreement already allows for the additional vehicle, and the geo-footprint was approved by the State and the County, who has strict guidelines. She said the town already has two freebee vehicles, one of which is ADA compliant. If the town council wants to add a third vehicle, she will double-check the contract and remind them to allocate funds in the budget for an additional Freebee. The Town Manager informed the Council that staff will be issuing an RFP for the Shuttle Bus, and asked if they should continue or rather allocate funds for an additional Freebee. Council Member Bruder suggested speaking with developers to support transportation and to participate in this endeavor.

Council Member Salver asked Council Member Bruder if she was recommending that the Council enact a Transportation Impact Fee, which would specify what the developers are responsible for. Council Member Bruder concurred. He then asked if they could send out a code red with a link to the app. Town Manager Lasday stated that she was working on an impact study and was gathering data to present to the Council for approval, before imposing any impact fees.

Town Manager Lasday thanked Council Member Salver and the Children's Trust. She stated that the Children's Trust afterschool program will begin on August 16, 2023. The community center shifted gears and established a robust sports program, which includes basketball, soccer, kung-fu, cheerleader, flag football, volleyball, and football. They are hoping for a smooth transition with the Community Center over the next two weeks, which would require a collaborative effort. She also informed the Council that when the Children's Trust inquired about the town's contribution to the program, she responded that the town is investing \$197,000. Her primary goal is to assist residents by improving the Children's Trust and community center programs. She thanked Joel Jacobi for organizing the summer tutoring program, which drew 48 students.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Yaffe reported that he and a few other council members attended the Miami-Dade County League of Cities meeting last week. He also mentioned serving at jury duty.

Council Member Salver reported he attended the Miami-Dade County League of Cities Board of Directors Meeting last week. He stated that Vice Mayor Fuller and Council Members Salver and Yaffe were presented with the Home Rule Hero Award by Jeff Branch, Legislative Executive for the Florida League of Cities. He reported that Mayor Tricoche, Vice Mayor Fuller, and himself attended the Miami Realtor meeting, which was held at the St. Regis in Bal Harbour. He stated that Mayor Tricoche represented by providing an update on what's going on in the Town. It was a very elaborate event, and he was glad he had attended. He also stated that he will be going to Orlando for the Florida League of Cities Annual Conference.

Council Member Yaffe reported he and Chief Building Official Mesa held a workshop in February on the newly implemented condominium laws. And he plans to hold a workshop in October to discuss the amendment to the condo laws that Senator Jones mentioned.

Council Member D'Amico reported she plans to attend the Florida League of Cities annual conference. She inquired about the Council's willingness to host a charette, which would involve presenting various building designs to the community and allowing them to provide feedback and have their needs and desires heard. Town Manager Lasday explained that an RFQ item to select an Architect for the Town Hall project was on the agenda and she was unsure how it would affect Council Member's D'Amico's request. Council Member D'Amico explained that the charette has nothing to do with the RFQ. She believed it would allow the Council and, if present, the Design Review Board to see the new concepts that are happening within buildings outside of town. Council Member Bruder stated that she was not opposed to the charette. However, members of the Design Review Board should not be allowed on the panel; they should only participate as residents.

Council Member Diallo reminded the public that the new school year will begin on August 17th. She congratulated Officer Whitt and Student of the Year Lara Schamy.

Council Member Bruder reminded drivers to be extra cautious next week due to increased foot traffic from children walking to school. She noted the Town will be adding more speed bumps to the road and, in a few months, will enact a resolution that will allow for the issuance of tickets for exceeding the speed limit on specific speed bumps. She urged residents to enroll their children in an after-school program, whether the Town's Children's Trust program or another after-care program, because it is unsafe for children to be out on the streets after school. She promoted the Children's Trust program, which is free and focuses on education.

Vice Mayor Fuller reminded the public to be cautious not only of children, but also of their parents. He reported he attended meetings of the Miami-Dade County League of Cities and the Miami Realtors. He also attended a meeting regarding the North Miami development to ensure it does not have an impact on the Town, which it does not appear to have yet. He will be attending the Florida League of Cities Annual Conference. He also went to the "Cones with the Police" event and thanked them for their efforts. He discussed a potential artificial reef for the town.

PUBLIC COMMENT

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Gene DeSouza, 1050 93 Street, came forward and expressed support for the Portuguese and French foreign language classes offered as part of the after-care school program. He acknowledged that there had been some restructuring, and that the Children's Trust Program does not apply to the foreign language classes. He clarified that he already had the program, that it was reorganized following the pandemic, that students were enrolled in it, and that they had a successful year with it. He questioned the Council about continuing of the foreign language instruction for kids through the Community Center.

Mr. DeSouza was advised by Council Member Bruder that the foreign language classes may not be available through the Children's Trust Program, but that he should meet with Parks & Recreation Director Watson to discuss the program. Mr. DeSouza responded that he has been in constant communication with Ms. Watson, and since they already have the space in the school, the teacher, and the accreditation, he just wanted to confirm that the program is still going on. Council Member Bruder stated that the Parks and Recreation Director would be delighted to assist with the program.

Former Mayor Linda Zilber, 1231 95 Street, came forward and stated that she has been involved in the Town for 70 years and it has been extremely difficult for her to attend meetings. Zoom meant everything to her, and the town's decision to limit Zoom to Council Members and staff is both unfair to the public and to her.

Council Member Bruder stated that they tried Zoom for the first-time last month. It worked for one meeting but failed for the second; the reason it hasn't been made public is because it is still in trial mode. Former Mayor Zilber expressed her disappointment that the Town could not provide Zoom. Vice Mayor Fuller stated that the Town is attempting to have meetings via Zoom again.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and reminded the public of Clean Up day on Sunday, and that volunteers were needed to clean up the bay.

Former Mayor Irene Wallace, 10350 West Bay Harbor Drive, came forward and expressed gratitude to the Public Works Department and to Council Member Yaffe for having the dead iguana removed from the 103rd Street pavement. She expressed her gratitude to Senator Jones for attending the Council Meeting, noting that it was crucial for the constituents to interact with the town's representatives. She stated that she collaborated with the Rudy Crew of the School Board, Committees, and Board Members, during construction of the Community Center, to provide the school with parking in the parking garage, a community center, and green space for the kids to play in. She further expressed gratitude to Council Member D'Amico for suggesting the charette. She also stated she was invited to the Aventura Marketing Council, where Mayors from surrounding municipalities attend and discuss all the various projects in their respective municipalities. She asked why the Town is not a part of this network, as she was very involved when she was mayor.

Council Member Bruder directed the Town Manager to inquire about the cost of membership in the Aventura Marketing Council and the benefits it will provide to the Town. Vice Mayor Fuller stated that it is a fantastic organization, and the Council was a member for many years.

Council Member D'Amico inquired as to why the Town is not listed in the Biscayne Bay Times.

Frances Neuhut, 1060 Kane Concourse, came forward and commented about the Church by the Sea, the Bal Harbour Shops, the new town hall, and the town temporary use of the 95th Street parking lot.

COMMITTEE REPORTS:

There were no Committee Reports.

CONSENT AGENDA: Set for approximately 7:55 p.m. *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

4. **Consideration and Approval** of revised Memorandums of Understanding (MOU) in substantial conformance, between The School Board of Miami-Dade County and the Town of Bay Harbor Islands regarding funding for the Town of Bay Harbor Islands appointed School Resource Officer at Ruth K. Broad for School Year 23-24. The Town's annual share of the cost is \$21,007.33.

6. **Consideration** and **Approval** of a contract between the Children's Trust and the Town of Bay Harbor Islands in substantial conformance, accepting grant funds for afterschool and summer camp programs.
7. **Consideration** and **Approval** of a Resolution regarding Amendment No. 3 to the FY 2022-2023 Budget.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING BUDGET AMENDMENT NO. 3 FOR THE ANNUAL BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023, ADJUSTING REVENUES AND EXPENDITURES OF FUNDS ESTABLISHED AND REFLECTED IN EXHIBIT "A" ATTACHED HERETO; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

8. **Consideration** and **Approval** to issue a Request for Proposal for a Town Park and Kayak Launch to be located at 9600 West Bay Harbor Drive.
9. **Consideration** and **Approval** to issue a Request for Proposal (RFP) for installation of an artificial reef and marine park off the north side of the Bay Harbor Causeway Island and at the west side of the 9600 West Bay Harbor Drive proposed park.
10. **Consideration** and **Approval** to issue a Request for Qualifications (RFQ) for the design of the new Town Hall.

Council Member Salver pulled Item 5 from the consent agenda for discussion.

ACTION: Council Member Bruder made a motion to approve the Consent Agenda. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

5. **Consideration** and **Approval** of a proposal from Universal Electric of Florida, Inc. (under the emergency procurement provision, pursuant to Section 2-1.2 of the Town Code) in the amount of \$165,846.20 for installation of the electrical infrastructure for the temporary Town Hall modulars in the 95th Street Parking Lot.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, ACCEPTING THE PROPOSAL FROM UNIVERSAL ELECTRIC OF FLORIDA, INC. IN THE AMOUNT OF \$165,846.20 TO INSTALL THE ELECTRICAL INFRASTRUCTURE FOR THE TEMPORARY TOWN HALL MODULARS IN THE 95TH STREET PARKING LOT; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR EXPENDITURE OF FUNDS; AND AN EFFECTIVE DATE.

Council Member Bruder moved the item to the floor, and Council Member Yaffe seconded the motion.

Council Member Salver inquired about the total budget for the modulars. He recalled that at a previous meeting, a page of the plans was not considered, resulting in this unaccounted expense. He was curious about the budget and whether there was anything else planned. He believed that when they self-condemned the town hall and began adding the modulars' expenses, they could have spent the funds on repairing the town hall, rather than moving the staff to modulars. Town Manager Lasday responded that a \$300,000 budget amendment was made about a year ago for this purpose. She stated that Town Hall has numerous problems, as was previously discussed. And with the opinions of consultants and staff, it was the consensus of the Council to demolish the building, because the problems were severe.

Town Engineer Carrero-Santana came forward and stated that the budget for the electrical portion of the modulars will not exceed \$165,846.20 and grants for the generator will be incorporated into this project. The missing sheet was an oversight of not including it in the final permit documents. The electrical portion was put out for bid first, so that the temporary modulars could be installed.

Council Member Salver asked if there is a cost estimate for the temporary modulars and where the grant is coming from. Mr. Carrero-Santana explained that the town was awarded \$800,000 in grants for a generator. Town Manager Lasday stated the grants will be used for the generator and the electrical work. Mayor Tricoche asked the Town Manager to provide an update on expenditure and future projections.

Council Member Bruder explained that they underbudgeted for this specific item because the amount was approximately \$400,000. In terms of Town Hall, the Council has discussed how dangerous it is for the employees.

Council Member D'Amico stated that if the Council can request building closures due to code compliance, the town should be able to do the same. She believed that the Council was afraid of losing its employees or being sued, and that they should not waste money, if Town Hall could be fixed.

Town Engineer Carrero-Santana stated that asbestos, structural, and mold consultants examined Town Hall, and their reports were used to make an educated decision.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the trailers will be located in the parking lot across from one of her businesses. She complained that the town took away the parking and complained about a parking crisis in the Business District. She said the businesses are allotted two parking spots, one in Block 11 which will be closed to build the new Town Hall, and the other one is where the modulars will be.

Council Member Yaffe asked if the modulars will take up the entire parking lot on 95th Street. Town Manager Lasday responded that only half the parking lot will be used for the modulars. When Town Hall is demolished, there will be an opportunity to add some type of surface to that area for parking temporarily, while the new Town Hall is being built.

ACTION: Council Member Bruder made a motion to approve the resolution. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

17. **Discussion** and **Possible** action regarding the acceptance of a donation of art to the Town of Bay Harbor Islands by resident Virginia Praschnik.

Council Member Salver moved the item to the floor, and Council Member Yaffe seconded the motion.

Virginia Praschnik, 1090 Kane Concourse, came forward and stated that she was presenting the artwork as a symbol of their profound connection and gratitude. The town has been the best place to raise and nurture a family which inspired her to create a piece that encapsulates its captivating beauty and enduring spirit. From the very beginning of her family Bay Harbor Islands has been nurturing heaven, not only where her daughter received an education but also thrived as her role of as an educator. Twelve years ago, they opened their jewelry store, an establishment that became more than just a business; it evolved into a haven of trust and comradery. Bay Harbor Islands is not a place to conduct business but a canvas on which strokes of friendship and community are beautifully painted. The artwork rendered in oil and canvas with palette knife aims to capture the essence of the island. The stroke not only offers a realistic portrait but also infused the figurative and futuristic reminding the town that within the embrace of tradition lies the boundless promise of tomorrow. This artwork serves as a testament of the endurance of belonging that envelope when stepping foot on the town. It is attributed to the impact the town has had on her family and the gesture for the love of support bestowed upon them. She humbly presents this artwork to the town; she hopes that it serves as a visual reminder of the interconnectedness of the lives and the power of art to transcend time and the indomitable spirit that defines this remarkable community, a beacon of shared memories and dreams that are yet to be realized.

PUBLIC COMMENT

Former Mayor Ileene Wallace, 10350 West Bay Harbor Drive, came forward and thanked and honored the artist for the artwork.

Frances Neuhut, 1060 Kane Concourse, came forward and stated she was happy that Ms. Praschnik donated her artwork. She stated that the Love Statue donated to the town is worth millions of dollars and asked that it be removed from in front of the Police Station and be insured.

Council Member Salver reminded the Town Manager not only to prepare a letter of thanks, but to also provide a charitable contribution receipt. The Town Manager stated that they have a form with the value on it, which will be used to prepare the donation receipt.

David Praschnik, 1090 Kane Concourse, came forward and expressed gratitude to the town for accepting the painting. He stated that he was once a resident of the town. His daughter attended the school and later became a teacher there. He liked Vice Mayor Fuller's suggestion to build an artificial reef that can withstand warmer waters.

PUBLIC COMMENTS CLOSED

ACTION: Council Member Salver made a motion to accept the artwork donation. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

PUBLIC HEARING:

11. **Consideration and Approval** of a request for an appeal to the Town Council of the Town of Bay Harbor Islands, Florida of a June 6, 2023 decision of the Design Review Board denying an application by CHBH 103 Street LLC for a multifamily development to be located at 10270-10290 East Bay Harbor Drive, Bay Harbor Islands, Florida.

Council Member Bruder moved the item to the floor, and Mayor Tricoche seconded the motion.

Maritza Haro, 200 South Biscayne Boulevard, Miami, Florida, was present on behalf of the Applicant.

Council Member Yaffe inquired about the Council receiving revised plans that did not go before the Design Review Board (DRB) and whether the plans were a subsequent version after the Board's denial.

Mrs. Haro confirmed and explained that they are appealing the DRB's decision of June 6, 2023. They had respectfully requested denial so that they could appear before the Council. Prior to the appeal, they attended three (3) DRB meetings. They met with nearby residents to hear their concerns; they revised the breezeway to address the main concern of the neighbors; and they resubmitted plans, which were reviewed by the Town's staff, who determined they met the requirements for site plan approval. She requested that the Council reverse the DRB's decision subject to the revised plans, which significantly improve the breezeway and address the main concerns of the neighbors.

Council Member D'Amico inquired as to whether the TDR request would be handled jointly with the appeal or independently. Mrs. Haro stated that they are listed on the agenda as distinct items. Town Attorney Geller made it clear that the Council's decision to support the TDR will be unaffected by the appeal's acceptance or rejection. Council Member D'Amico inquired as to whether the applicant would be precluded from filing an appeal, if the request for a deferment were granted.

It was noted that the applicant requested a denial from the DRB.

Town Attorney Geller swore in those individuals who testified.

Mrs. Haro explained that they were appealing a DRB denial of a proposed site plan development located south on 103rd Street and west of East Bay Harbor Drive. James Curnin, owner, is proposing a luxury rental community. The first project is already under construction, and the second was approved by the DRB and will be submitted for permitting in the coming months. The six-story, 77-unit luxury building that the DRB rejected includes 158 parking spaces with mechanical lifts and only 154 are required, and nearly 30% of landscaping and 20% is required. The application was filed in August 2022 and they met with staff on August 30, 2022. On October 13, 2022, the project was presented to the Development & Review Committee (DRC), which then decided that a second DRC meeting was necessary in light of staff's feedback. The second DRC meeting was held on November 15, 2022, and staff approved the plans for code compliance. The first DRB hearing took place on December 6, 2022, and the DRB provided design-related comments while deferring the application. At the second DRB meeting on March 7, 2023, the Applicant was requested to revise all windows to be floor to ceiling, provide details on valet operation, provide additional renderings of neighbors' view, and meet with The Palms neighbors. The Applicant revised the plans on March 26, 2023 to address neighbors' operational concerns, provided additional renderings, and met with The Palms neighbors. In order to address DRB and the neighbors' operational concerns, the Applicant updated their plans on June 6, 2023. However, the DRB expressed further concerns about the proposed breezeway, so the Applicant kindly requested a denial in order to file this appeal for a final decision.

Mrs. Haro further explained that since August 2022, the owner has incurred significant expenses in the form of the requested revisions, consultant fees, and holding costs. Her team has been working on plans to address the DRB and the neighbors' concerns about the breezeway since June 6, 2023. She requested a reconsideration of the revised version of the plans, which significantly opens up the breezeway and addresses both the DRB and the neighbors' concerns. She stated that they submitted the revised plans on July 25th and received confirmation from Town Planner Michael Miller and Chief Building Official Mike Mesa that the revised plans are in accordance with the Town's code. They worked diligently to address all of the comments received, holding several meetings and maintaining contact with The Palms.

Mrs. Haro further explained that the neighbors were concerned about the assemblage of multiple lots, which is permitted by Code and is also a common occurrence in the Town. They were also concerned about the impact of the project to their views. She advised that case law in Florida does not recognize interest from an obstructed view over adjoining land. Even if the site is not developed as a single project as proposed, but as multiple projects, someone's view may be blocked. She stated that the revised plans significantly opens up the breezeway to essentially create the appearance of two (2) separate buildings. Another concern raised by the neighbors were the setbacks.

The Palms current setback is nine (9) feet, but the proposed project is setback 22 feet 6 inches, which will include a dense landscape buffer. During the meetings with the neighbors of The Palms, they were asked to relocate the mechanical equipment to the northwest of the floor plan and eliminate the trash access from the southwest corner. They were able to accommodate the request and relocated the mechanical equipment. To address the DRB's comment for the alternative breezeway, they revised the plans and opened up the breezeway with only corridors connecting the two structures at each level. The code required breezeway is not intended to preserve or provide neighboring views, it is intended to be part of the design to break up the massing. Mrs. Haro presented the landscape plan for the ground floor and explained that they are significantly providing a lot of landscaping, buffering, and vegetation to ensure that it is a beautiful building. She then presented the landscape plan for the roof and explained that vegetation and landscaping create buffering to ensure privacy for future residents and neighbors. She requested that the Council approve the appeal with the proposed alternative breezeway.

James Curnin, 10200 West Bay Harbor Drive, came forward and stated that they have been seeking approval for a while. The properties are owned by him. He explained that he listened to the neighbors' concerns, and he has done the best he can to accommodate them. He informed the Council that they took 6,000 square feet of net rentable square footage which adds up to \$8 Million of value to show good faith that he wants to be here in the long haul, and that he has been stalled for a year. He respectfully requested the Council's approval.

Council Member Bruder stated that she attended the last DRB meeting, and there were a lot of residents from The Palms. She thanked the developers for opening up the breezeway to allow air and view. She asked Mrs. Haro if they had met with the Condominium Association of The Palms and if they were satisfied overall with the changes made.

Mrs. Haro responded that they shared the revised renderings with The Palms. They expressed they were appreciative of the work they've done by relocating the mechanical equipment. Some specific owners raised concerns about what their unit views would be. She explained they've done everything they can to make this project code compliant and to address all the comments and concerns that were raised. Council Member Bruder asked how many times they went in front of the DRB. Mrs. Haro responded three (3) times. Council Member Bruder asked if each time the DRB raised a new concern, and if they incorporated the changes the DRB wanted each time. Mrs. Haro confirmed. Council Member Bruder acknowledged that all the changes requested were made, except for the views, since that cannot be controlled.

Mayor Tricoche stated that she looked at the three items associated with the appeal, the density, the mechanical lifts, and the breezeway design, and felt that they were within Code. She thanked the developers for being collaborative with the community and trying to make the project work.

Council Member D'Amico complained that she couldn't determine how this development would look, because they did not include elevations for the street level. She asked if parking will be achieved in three (3) minutes as their traffic study states. Mrs. Haro confirmed. Council Member D'Amico disagreed and felt there was no room for a successful valet operation. She stated that the plans provided showed the valet crosses at one point causing traffic. She asked about the ratio for the lifts. Mrs. Haro responded it is about 75 lifts. Council Member D'Amico stated that the cars are subject to being under a lift or over a lift. Mrs. Haro stated that the development will be valet operated and no resident will have access to the lifts. Council Member D'Amico felt that it was not going to work. She continued stating the reason why people are not agreeing with the proposed development because the breezeway isn't located in the right place. Mr. Curnin responded that the breezeway is exactly where it's supposed to be based on the code. Council Member D'Amico commented that the breezeway is not successful where it's placed. People don't like it because it's not articulated; it's one sterile façade; and it's massive. She stated that their renderings are deceiving because they failed to include adjacent properties.

Council Member Salver asked how many units are in the old building combining all four lots. Mrs. Haro stated there are 36 units. She mentioned that they were providing greater setbacks than The Palms. The density is 60 units per acre as opposed to 81 units per acre; 29.1% landscaping as opposed to 20%, mechanical lifts as opposed to tandem parking, and everything they have requested is within code. She added that Mr. Curnin lives in Bay Harbor Islands and will be a good neighbor through construction and process. Council Member Salver asked where the DRB was going with the project, when he asked them to reject it. Mr. Curnin responded that the DRB didn't want to reject the project, because they genuinely liked it. Because the Board kept adding more comments each time, he requested a denial.

Council Member Salver commented that the configuration of the four lots is definitely a challenge and he agreed with Council Member D'Amico that the project is a little intense.

Council Member D'Amico asked if they have a Unity Title. Mrs. Haro responded that she would have to check if it was completed. Council Member D'Amico commented that they should have a Unity of Title before coming to the Board. Council Member Yaffe explained that the Unity of Title is part of the submittal package. Town Attorney Geller clarified that a Unity of Title is not recorded until the developer has site plan approval.

PUBLIC COMMENTS

Elena Tushime, 1133 102 Street, came forward and stated that her unit is one of the corner units, and the development will wrap around it. She complained that she asked the developers to provide her with a plan that showed how her apartment would look from their point of view, and that they couldn't, because it was difficult to provide.

She stated that she is an international designer and that they could have complied easily with her request. She added that she understands new construction happens every day, and that if she lost the view from one side, she was fine with it, but in this case her views will be blocked from all sides, causing her to lose value of her home.

Tena Zucker, 1133 102 Street, came forward and stated that the Council was being deceived. The new designs were never presented to the DRB. This breezeway presented is located from the side and doesn't allow air and sight. She felt that the breezeway as presented conforms to the rules and code which stipulate that it must respond to the existing context of the build environment, open spaces to be compatible with existing development, and provide sufficient buffering from adjacent properties. She continued explaining that the proposed development as revised would be too massive, too extensive, and would create unbearable traffic.

Cesar Martinez, 1133 102 Street, came forward and stated he has been a resident for 26 years and a part of the Board for The Palms. He commented that at the DRB meeting on June 6th, this project was rejected at the applicant's request. The applicant opted to request a denial so they could appeal to the Council and present a new entire project from what was originally presented to the DRB. According to Section 5-23-1(b) of the Town Code, the actions of the DRB may be appealed to the Town Council. If the Town Council approves the land development application after consideration by the DRB, then the actions of the Council take precedence of the Board. He said the Town may review and decide on projects that were examined by the DRB, whereas the project that's being presented to the Council is not the one that was previously submitted. He opined that it is not an appeal of the decision; it is seeking the approval of a new revised plan specifically of an alternate breezeway that was never reviewed by the DRB. The DRB should have had first say on the approvals of breezeways. He stated that if the applicant didn't want to fight this plan approval, which is the only scope for this appeal, then they should have accepted the deferral.

Frances Neuhut, 1060 Kane Concourse, came forward and stated that she agreed with Council Member D'Amico. She felt that this was a very deceiving project. She discussed the possibility of them buying into the TDRs. She stated that the impact alone on the community will be more expensive than the \$3 Million for them buying TDRs from the Town.

With the approval of the Council, resident Adam Ziefer gave his time to Tena Zucker, so she could complete her presentation.

Tena Zucker, 1133 102 Street, came forward and stated she is on the Board for The Palms. She argued that the project would have a massive impact on the traffic, and the valet service was unrealistic. She explained that since it would be a rental unit, there would be constant delivery trucks wrapping The Palms condominium parking lot. And the proposed breezeways would still not leave enough passage for light and air, because of the little openness. She requested the appeal not be approved.

Council Member D'Amico asked about loading zones for the proposed development. Ms. Haro responded that the code does not require loading zones for residential properties. Council Member D'Amico raised concerns about the lifts and their handling. Ms. Haro responded that the lifts will be operated by Klaus, the designated company by the Town. Generally, they comply with all the criteria with the new lift ordinance. The only thing that this project grandfather is the percentage of lifts it provides all the safety criteria have been met. There will be 100% valet staffed appropriately 24/7 to avoid any queuing on the right-of-way.

Mayor Tricoche stated that there will always be issues with a new development. She commented on The Palms having no loading zone either because they block her parking every day. She also knows when residents at The Palms don't want to wait for a parking spot, or when the residents also make a queue to wait for parking. She believed that the Town needs to come up with solutions with items that don't work for the Town. She felt the Town needs to pass an ordinance that addresses loading zones requirement because of the increased density.

Council Member Yaffe asked Town Attorney Geller if there is a requirement for the project to go back to the DRB because of the subsequent modification after the June 6th meeting. Town Attorney Geller opined that the request does not have to go back to the DRB. The Town Council's decision takes precedence over the DRB's decision. Plus, the modifications were made to meet objections from the DRB and to address public comments, and he sees no reason why the request has to go back to the DRB as the matter is at the discretion of the Council.

Council Member Yaffe stated that he listened to all of the comments and to the presenters, and he appreciated that the developer had reached out to the community. He referred to the increase in developments on both islands, and stated there is nothing much the Council can do, so long as the development is within code.

Council Member Bruder asked if the breezeway was in the exact same place as it was when it was submitted to the DRB at the last meeting, and if it wasn't shifted to the side. Mrs. Haro confirmed that it is the same.

Vice Mayor Fuller clarified that it is not the same exact design. It is a reduced space, because they took away 6,000 square feet of rentable space.

ACTION: Council Member Bruder made a motion to grant the appeal with the conditions outlined in the Town Planner's Staff Report, and to approve the project with the modified plans submitted on July 25, 2023. Mayor Tricoche seconded the motion, and it passed 6-1 on a poll vote, with Council Member D'Amico opposing.

ORDINANCES ON SECOND READING:

12. **Consideration and Approval** of an ordinance on Second Reading regarding Town Elections, amending Section 6-4 of the Town Code to provide for two (2) days of early voting. Sponsored by Council Member Isaac Salver.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING SECTION 6-4 OF THE TOWN CODE PROVIDING EARLY VOTING FOR MUNICIPAL ELECTIONS, PURSUANT TO SECTION 100.3605, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICT AND REPEALER; AND AN EFFECTIVE DATE.

Council Member Salver moved the item to the floor, and Council Member Yaffe seconded the motion.

Council Member Yaffe praised the idea of having early voting. He stated that other municipalities have the option, and it is good for the residents of the Town to have the option as well.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated she has read about early elections. She complained about no term limits for the incumbents, and the Council serving for more than 20 years. She felt that Bay Harbor Islands' elections are unfair and undemocratic; and until the town has term limits, the Council shouldn't be making any changes to the Town's elections.

Council Member Yaffe disagreed with Mrs. Neuhut's comments because he felt the ordinance was making it easier to vote.

PUBLIC COMMENT CLOSED

ACTION: Council Member Salver made a motion to approve the ordinance on second reading. Council Member Yaffe seconded the motion, and it passed 6-0 on a poll vote. Council Member Bruder was absent from the dais.

ORDINANCES ON FIRST READING:

13. **Consideration and Approval** of an ordinance on First Reading amending Article 1 of Chapter 5 of the Town Code entitled "Buildings and Construction" creating a new Section 5-5.2 related to the monitoring of construction site activities, including demolition, and specified new construction. Sponsored by Council Member Robert Yaffe.

**AN ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA,
AMENDING THE TOWN’S CODE OF ORDINANCES
RELATED TO BUILDING AND CONSTRUCTION
ACTIVITIES; AMENDING ARTICLE 1 OF CHAPTER
5 ENTITLED BUILDINGS AND CONSTRUCTION,
CREATING A NEW SECTION 5-5.2 RELATED TO
THE MONITORING OF CONSTRUCTION SITE
ACTIVITIES, INCLUDING DEMOLITION AND
SPECIFIED NEW CONSTRUCTION; PROVIDING
FOR INCORPORATION OF RECITALS; PROVIDING
FOR SEVERABILITY; PROVIDING FOR
CODIFICATION; AND PROVIDING AN EFFECTIVE
DATE.**

Council Member Yaffe moved the item to the floor, and Council Member Diallo seconded the motion.

Council Member D’Amico suggested the ordinance mirror the one that was enacted by Surfside. She asked if the Town has setbacks for low grade.

Town Planner Michael Miller came forward and explained that the ordinance includes setbacks for above grade structures and for underground level parking. Council Member D’Amico raised a concern regarding the setbacks.

Mr. Miller advised that he has to review the setbacks to provide her with a response. She expressed concern to some of the verbiage in the ordinance and requested that “driving the piles” be removed.

Vice Mayor Fuller stated that this ordinance is a great start. He asked Council Member D’Amico where specifically in the ordinance she wants to remove “driving” from, because if it’s removed without substituting the word elsewhere, all it will be doing is removing the regulation. The wording has to be where it’s being restricted or find a way subject to further evaluations. He requested the ordinance be reworded.

Council Member D’Amico stated that she is comfortable moving forward with the ordinance, but wanted to review it once more to ensure it fits the needs of the town.

Mayor Tricoche asked Council Member D’Amico if she was comfortable approving the ordinance on first reading pending the revisions for the second reading. Council Member D’Amico confirmed she was comfortable with proceeding. Mayor Tricoche asked Town Attorney Geller if the proposed changes Council Member D’Amico expressed would be of concern with the ordinance coming back for second reading.

Council Member D'Amico clarified her suggested amendment to change the methodology of drilling. Town Attorney Geller asked if her concern was whether or not the ordinance expressed the methodology that should be employed for certain things like "pile driving". If so, he does not have any concerns with amending the ordinance prior to second reading, without having a new first reading, because it is well within the topic the ordinance is intended to address.

Council Member D'Amico suggested that an engineer should review the ordinance. Town Attorney Geller deferred this request to the Town Manager. Council Member D'Amico continued and stated that she would like to discuss the methodology with someone in Surfside. The Council encouraged her to do so.

Town Manager Lasday advised the ordinance has several blank spaces to be filled in before second reading.

Town Planner Miller stated that as to Council Member D'Amico's question regarding the setback, it is five (5) feet for above or below grade.

Council Member Yaffe asked for recommendations on how to fill in the blank portions of the ordinance. Town Planner Miller responded that he mentioned Surfside's criteria of 300 feet and gave an example. Council Member Yaffe asked if they can use the 300 feet for the first reading, and amend at second reading, if necessary. Mr. Miller confirmed.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and suggested that the ordinance should include information that applicants requesting a demolition permit should pay all outstanding violation fees and liens prior to issuance of a permit, and the Design Review Board should approve site developments before the TDRs are approved.

ACTION: Council Member Yaffe made a motion to approve the ordinance on first reading. Council Member Diallo seconded the motion, and it passed unanimously on a poll vote.

16. Ratification of updates to the Rolledback Rate in Resolution No. 2310 which addresses the proposed millage rate and percentage over the millage rate. The current year rolledback rate, as computed pursuant to Section 200.065, Florida Statutes is 2.730559 mills, which is 2.730559 per \$1,000 of assessed property within the Town of Bay Harbor Islands. The proposed millage rate is 16.5% more than the rolledback rate.

Council Member Bruder moved the item to the floor, and Council Member Yaffe seconded the motion.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that as per Florida Statute, Section 200.065, the millage rate has to be reported to Miami-Dade County. She stated that at the July 27, 2023 Special Council Meeting, the Town failed to inform the residents of the appraisal value of their properties increased/decreased by 30%, and although the millage rate stayed the same, the real property taxes will increase. She stated that the Homestead properties are not affected much as opposed to the Business District. She asked why the millage rate isn't the same as Bal Harbour's and why the Town presented the tax rate remaining the same when the property values increased, which in turn increased tax revenue.

PUBLIC COMMENT CLOSED

ACTION: Council Member Bruder made a motion to ratify updates to the rollback rate in Resolution No. 2310. Council Member Yaffe seconded the motion, and it passed 6-1 on a poll vote with Council Member Salver opposing.

14. **Consideration and Approval** of an ordinance on First Reading amending Section 23-12 of the Town Code entitled "General Provisions" by revising Section 23-12(26) to include padel and pickle ball to the outdoor recreational game court facilities allowed in the Town, and to modify fencing regulations to accommodate these sports.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S ZONING AND PLANNING CODIFICATION AND SECTION 23-12 ENTITLED GENERAL PROVISIONS; AMENDING SECTION 23-12(26) RELATED TO OUTDOOR RECREATIONAL GAME COURT FACILITIES TO CLARIFY AND EXPAND THE TYPES OF GAME COURT FACILITIES ALLOWED AND TO MODIFY FENCING ALLOWANCES; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, AND PROVIDING AN EFFECTIVE DATE.

Council Member Salver moved the item to the floor, and Council Member D'Amico seconded the motion.

Council Member Bruder raised a concern that there shouldn't be lights for night time games and asked for the ordinance to be modified.

Vice Mayor Fuller stated that he had no issue with the ordinance but wanted sound mitigation to be included.

Council Member Yaffe clarified that the house that has a tennis court is on a double lot, and unless the property owner doesn't have a second lot, the ordinance doesn't work.

Town Attorney Geller suggested some of the concerns to the ordinance be addressed and that it be brought back for second reading or that it be passed on first reading and the changes made before the second reading. He also suggested that the ordinance should include a new section that would state "nothing in the ordinance shall relieve anyone of obligations to abide by existing Town noise ordinances."

Council Member Yaffe disagreed to adding a new section, because he felt the sound of the pickle, or tennis ball do not rise to the decibel level enacted in the noise ordinance. Town Attorney Geller responded that they can always amend the ordinance to reduce the decibel level. Vice Mayor Fuller explained that the decibel level is audible, but it might not rise to the 70th level. He said he was concerned about the residents hearing the pounding of the ball all day.

Council Member Salver stated that when the Council approved the tennis court, he recalled the court having lights and the play time was limited to 10:00 p.m. He added that he has played both sports and felt the noise level between tennis and pickle ball is equivalent. However, he was not comfortable with the noise of the padel board.

Mayor Tricoche asked if it was the consensus of the Council to withdraw the motions and have the ordinance returned for first reading. Since the motion was made by Council Member Salver, he proceeded with the motion.

PUBLIC COMMENT

Matt Amster, 200 South Biscayne Boulevard, Miami, Florida, came forward and stated he represented Stuart and Stacey Schwadron who requested an amendment to the ordinance to allow padel ball. He explained that the padel courts are one third the size of a tennis court, it's a game of finesse, and they were only looking to add padel. Pickle ball uses a plastic ball that creates more noise, and if that were to be stricken in the revised ordinance, his clients wouldn't object to it. He stated that padel ball is not as loud as people expect it to be. He wanted to ensure that this would be there for the enjoyment of the neighbors. He stated that he does not oppose the light restriction. He said the lights will be down directed.

Council Member D'Amico raised a concern about amending the ordinance to cater for one specific property. Vice Mayor Fuller explained that the enacted ordinance only discusses tennis ball courts, and residents are requesting that padel/pickle ball be included. Council Member D'Amico disagreed with amending the ordinance to include only padel ball and not pickle ball. Vice Mayor Fuller explained that the issue now is whether padel ball is louder than pickle ball.

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the City of Aventura attempted to add a pickle ball court on municipal land, but was turned down by the residents. She disagreed with the ordinance and advocated for its rejection.

PUBLIC COMMENT CLOSED

Vice Mayor Fuller stated that he was not voting in favor of the ordinance, unless sound mitigation was included.

ACTION: Council Member Salver made a motion to approve the ordinance on first reading. Council Member D’Amico seconded the motion which failed 1-6 with Council Members Bruder, D’Amico, Diallo and Yaffe and Vice Mayor Fuller and Mayor Tricoche opposing. Council Member Salver voted in favor.

27. Discussion regarding BHI-229-9600 West Bay Harbor Drive - Florida International University Concept Design for the Town Park and Kayak Launch Rendering.

A brief discussion ensued as to whether to include a loop in front of the kayak launch, which will in turn remove parking on the site. It was the consensus of the Council to include the loop.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and reminded the Council that this property belongs to 1177 Kane Concourse which served as the site’s parking lot for their project. She stated that it is becoming a park, and in their contract, there was \$500,000 donated from the developer. She raised a concern about the dock and seawall falling in and felt that the developer should be paying for the restoration and park design, as opposed to the Town.

PUBLIC COMMENT CLOSED

20. **Consideration** and **Approval** of a private Transfer of Development Rights (TDR) transaction for one (1) private dwelling unit from 10081 West Bay Harbor Drive to 10141-43 East Bay Harbor Drive development.
21. **Consideration** and **Approval** of a private Transfer of Development Rights (TDR) transaction for one (1) private dwelling unit from 1050 95th Street to 10141-43 East Bay Harbor Drive development.
22. **Consideration** and **Approval** of two (2) private Transfer of Development Rights (TDR) transaction for two (2) private dwelling units from 1020 93rd Street to 10141-43 East Bay Harbor Drive development.
23. **Consideration** and **Approval** of a private Transfer of Development Rights (TDR) transaction for five private (5) dwelling units from 1150 100th Street to 10141-43 East Bay Harbor Drive development.
Items 20 through 23 were heard as one item.

ACTION: Council Member Yaffe made a motion to approve Items 20, 21, 22, and 23 simultaneously. Mayor Tricoche seconded the motion, and it passed unanimously on a poll vote.

24. **Consideration** and **Approval** of a TDR transaction request by CHBH 100th Street LLC for the transfer of 15 TDR dwelling units from the Town-owned "pool" of TDR units to the future Multifamily Development project to be located at 1145-1167 100 Street.

Council Member Yaffe made a motion to hear Items 24 and 25 simultaneously and moved the items to the floor. Council Member Bruder seconded the motion.

Council Member D'Amico raised a concern as to why both were being heard together, when the requests are for different properties.

Maritza Haro, 200 S. Biscayne Boulevard, Miami, Florida, came forward and explained that the request for Item 24, the site development approval was granted by the DRB in November 2022, and they are making an offer to purchase 15 TDRs; Item 25 relates to the project that was approved today.

Council Member Yaffe amended his motion to approve the request for Item 24 and for the funds received from this sale to be used towards the development of the new Town Hall. Council Member Bruder seconded the motion, and all voted in favor.

Council Member Salver asked how many TDRs the Town has. Town Manager Lasday responded the town has 106 TDRs. Council Member D'Amico objected to the sale of the TDRs. She stated that she could not make a proper decision without seeing a map of where all the TDRs are being disbursed to.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated her comments will apply to Items 24 and 25. She felt that the Design Review Board was not qualified to approve site developments because there are discrepancies between the number of TDRs being approved, and there are no Unity of Titles. She said the approval process is deceiving because even if appealed, the Town Council denies the appeal before it's even heard, plus the Council should be responsible for approving site developments, not the DRB.

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion to approve Item #24 for the Sale of 15 Town TDRs with the proceeds going towards the construction of the new Town Hall. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

25. **Consideration** and **Approval** of a TDR transaction request by CHBH 103rd Street LLC for the transfer of 36 TDR units from the Town-owned "pool" of TDR units to the future Multifamily Development project to be located at 10200-10290 East Bay Harbor Drive.

Council Member Yaffe moved the item to the floor, and Council Member Bruder seconded the motion.

PUBLIC COMMENTS

Frances Neuhut, 1060 Kane Concourse, came forward and commented that she cannot see the improvements made to the town using the TDR funds. She complained that the deeds showing the sale of the TDRs are not being recorded with the County Recorder.

Cesar Martinez, Elena Tushime, and Tena Zucker, 1133 102 Street, all came forward and expressed opposition to the TDR transaction.

PUBLIC COMMENTS CLOSED

Council Member D'Amico stated that she opposed the TDR transaction.

ACTION: Council Member Yaffe made a motion to approve the transfer of 36 Town TDRs and that the proceeds of the sale be used for the construction of the new Town Hall. Council Member Bruder seconded the motion, and it passed 6-1 on a poll vote, with Council Member D'Amico opposing.

19. **Consideration** and **Approval** of a private Transfer of Development Rights (TDR) transaction for four (4) private dwelling units from 1155 101st Street to 1145 - 1155 - 1167 100th Street development.

ACTION: Council Member Yaffe made a motion to approve the private TDR transaction. Vice Mayor Fuller seconded the motion, and it passed 6-1 on a poll vote, with Council Member D'Amico opposing.

26. **Consideration** and **Approval** of a Resolution accepting a Dedication of Easement from 9700 W Bay Harbor Drive LLC to the Town of Bay Harbor Islands to use, access, repair, and maintain the Stormwater Drainage Pipe at 9700 West Bay Harbor Drive and entering into a Drainage Easement Agreement in substantial conformance.

Council Member Yaffe moved the item to the floor, and Mayor Tricoche seconded the motion.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that in the past, the Town had not discussed easements and dedication of easements. And if the town continues to have dedication of easements, it will not have safe sidewalks, streets, and roads for the community. She suggested the taking away of dedication of easement and giving away of town land stop.

Council Member Yaffe responded that in this case an easement is being given to the Town instead of the town providing one.

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion to approve the resolution. Mayor Tricoche seconded the motion, and it passed 6-0 on a poll vote. Vice Mayor Fuller was absent from the dais.

15. **Consideration and Approval** of an ordinance amending Sections 5-20 and 5-23 of the Town Code related to the submittal requirements for Site Development Plans application.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO BUILDING AND CONSTRUCTION ACTIVITIES; AMENDING ARTICLE II OF CHAPTER 5 ENTITLED DESIGN REVIEW BOARD; AMENDING SECTION 5-20 RELATED TO THE MINIMUM CONTENTS OF PRELIMINARY PLANS SUBMITTED TO THE TOWN FOR SITE DEVELOPMENT PLAN REVIEW; ADDITIONALLY, AMENDING SECTION 5-23 RELATED TO TIME FOR SUBMITTING FINAL WORKING PLANS TO RECOGNIZE STATE MANDATED EXTENSIONS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member D'Amico moved the item to the floor and Mayor Tricoche seconded the motion.

Council Member D'Amico suggested that the elevations of the adjacent building should also be added as part of the ordinance, which would force the developer to place the building height next to the proposed building, when providing plans for site development. The Council Members agreed with Council Member D'Amico's request. Town Attorney Geller advised the information will be added prior to second reading.

Council Member D’Amico continued reading Section i of the ordinance “the cross section through the building at the periodic locations depicting the proposed building exterior floors” and suggested adding a minimum of 2. She asked Town Planner Miller to explain Section m of the proposed ordinance. Town Planner Miller stated that they can add a minimum of 2 for the cross sections; that the ordinance already includes the preliminary elevations for the front, side, and rear, but will be expanded to include the properties on both sides. The preliminary civil engineering plans and the FEMA information were added to the ordinance as a request from the Building Official and Town Engineer. Language referenced on the application is also referenced in the ordinance, and Section 5-23 references that the submittal timeframes shall automatically be extended per the laws/orders of the State of Florida.

Council Member D’Amico agreed with the small changes made to the ordinance. Council Member Salver asked if this ordinance allows developers to speak with adjacent property owners to present their proposed projects. Town Planner Miller responded that a recent ordinance was passed that requires developers to hold Community Meetings prior to going in front of the Design Review Board.

Council Member Yaffe made a motion to extend the meeting to continue discussing the item. Council Member Bruder seconded the motion, and all voted in favor.

Council Member D’Amico asked Chief Building Official Mike Mesa if other towns require elevations as part of the application and would this increase the developer’s cost to produce the elevations. Mr. Mesa responded that other towns do require elevations and it doesn’t cost a lot of money for developers to provide this additional document. However, he didn’t feel it was standard practice. He stated that the ordinance already includes documentation that the Building Department requests, plus the Town Engineer added additional requirements. He stated that sections and foundation might be getting ahead of what a site plan approval is. Council Member D’Amico responded that she was referring to the schematic design sections. She said no one knew there was an underground setback, which is needed to review the sections; and if it is not provided they’ll never know how it would affect the town. Vice Mayor Fuller explained that he is not doubting her expertise, instead he is counting on it. He wanted to refine the ordinance so that it includes her requirements, but also doesn’t handicap the developers to think that it’s too expensive to even have a conversation of development in the town; he wanted them to be able to design a plan that works for the staff, her, and the developers. Council Member D’Amico requested that the ordinance include information requiring developers to provide two cross-sections and the elevation of the adjacent buildings.

Town Attorney Geller advised they can amend the motion to include Council Member D’Amico’s requirements now or at a second first reading to address other concerns.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the Council is creating new ordinances into ordinances that the town hasn't followed. She complained about the ordinance does not make sense, about the Design Review Board approving easements and setbacks, and about the lack of underground FPL wires.

PUBLIC COMMENT CLOSED

Council Member Yaffe commented that this ordinance applies to the Development Review Committee, and that he would be more inclined to approve the proposed ordinance, if it applied to the Design Review Board instead. Council Member D'Amico agreed.

ACTION: Council Member D'Amico made a motion to approve the ordinance including removal of the requirement for submittal of elevation plans for adjacent properties and two cross-sections from the Development Review Committee's requirements to the Design Review Board requirements. Mayor Tricoche seconded the motion, and it passed unanimously on a poll vote.

DEFERRED ITEMS: There were no deferred items.

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

18. **Request for approval** of the location of a temporary Sales Center at 10301 East Bay Harbor Drive in connection with the development of the properties at 9781 and 9927-9955 East Bay Harbor Drive, by 9781 Bay Harbor Development LLC, 9955 Bay Harbor Development LLC. The requested duration for the Sales Center is not to exceed one year.

Council Member Yaffe moved the item to the floor and Council Member Bruder seconded the motion.

Joseph Ruiz, 320 Miracle Mile, on behalf the Regency Development Group, came forward and stated that as he's mentioned in prior meetings, his client is bringing three (3) multi-residential projects to the town, including a boutique nine-unit building on the site of the proposed sales center. The two other projects are located at 9955 East Bay Harbor Drive and 9781 East Bay Harbor Drive. He requested approval to allow for the use of the existing Sales Center for a period of one year to conduct sales for those three projects. In addition, in lieu of demolishing the sales center, they are offering a \$52,000 donation to Town.

Vice Mayor Fuller asked if the Sales Center will be demolished after one year. Mr. Ruiz confirmed. Vice Mayor Fuller then asked if they would demolish the Sales Center, even if they didn't sell out the properties. Mr. Ruiz confirmed.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that she doesn't oppose the Sales Center in the Residential District because the code allows it. She said she opposes the Council approving three site developments on Kane Concourse. She stated that the approvals of the developments are destroying the Business District and creating a parking shortage.

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion to approve the temporary Sales Center for a duration of one year and to accept a contribution of \$52,000. Council Member Bruder seconded the motion, and it passed 5-2 with Council Member D'Amico and Mayor Tricoche opposing.

ADJOURNMENT

There being no further business the meeting adjourned at 11:34 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A SPECIAL COUNCIL MEETING**

A Special Meeting of the Town Council was held on Monday, August 21, 2023, at 6:36 p.m. Upon roll call the following members responded:

Mayor Elizabeth Tricoche	
Vice Mayor Joshua Fuller	Council Member Stephanie Bruder
Council Member Teri D'Amico	Council Member Molly Diallo
Council Member Robert Yaffe	

Council Member Isaac Salver was absent.

Special Counsel Scott D. Alexander from Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A., was present to respond to questions regarding the matter.

- 1. Consideration and Approval of a Resolution approving a Settlement Agreement between the Town and Lindsley Noel regarding a charge filed with the Equal Employment Opportunity Commission, and an Employment Agreement regarding his services as Police Chief. Enclosed are copies of the Settlement Agreement and Employment Agreement.**

Council Member Bruder moved the item to the floor, and Council Member Diallo seconded the motion.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and thanked Council Member Bruder and the other Council Members for supporting the item. She also spoke in support of Chief Noel.

ACTION: Council Member Bruder made a motion to approve the resolution. Council Member Diallo seconded the motion, and all voted in favor.

There being no further business to address the meeting adjourned at 6:41 p.m.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A BUDGET PUBLIC MEETING

The First Budget Public Hearing was held on Wednesday, September 13, 2023 at 6:31 p.m. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Council Members responded:

Mayor Elizabeth Tricoche
Vice Mayor Joshua Fuller Council Member Molly Diallo
Council Member Robert Yaffe

Council Member Salver joined the meeting at 6:33 p.m.

Council Member Teri D'Amico joined the meeting at 6:34 p.m.

Council Member Stephanie Bruder was absent.

1. **Announcement** of the proposed FY 2024 property tax rate of 3.1728 mills per \$1,000 taxable value. The "rolled-back" millage rate is 2.7234 mills per \$1,000 taxable value. The proposed FY 2024 Millage Rate is 16.50% more than the rolled-back rate, needed to fund expenditures and expenses for the Fiscal Year beginning October 1, 2023 and ending September 30, 2024.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked why the Town's millage rate wasn't the same as Bal Harbour's. She stated that Real Estate taxes paid by property owners are rising because of the rising value of their properties; thus, non-homestead apartments and commercial buildings will be disproportionately affected by any tax increases.

PUBLIC COMMENT CLOSED

2. **Discussion** regarding the Tentative Budget and Tentative Millage Rate for the 2023-2024 Fiscal Year.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the Home Rule power applies to everything except taxation. She inquired about the amount allocated in the budget to promote the Business District.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and asked how much was budgeted for the Art Festival, as she found the previous one disappointing.

Town Manager Lasday responded that \$250,000 was budgeted for the Art Festival.

PUBLIC COMMENT CLOSED

3. **Consideration and Approval** of a resolution adopting a Tentative Millage Rate of 3.1728 mills for the 2023-2024 Fiscal Year, which is 16.50% more than the rolled back rate of 2.7234 mills per \$1,000 of taxable property value.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, ADOPTING A TENTATIVE MILLAGE RATE OF 3.1728 MILLS FOR THE FISCAL YEAR 2023-2024, WHICH IS GREATER THAN THE ROLLED BACK RATE OF 2.7234 MILLS, COMPUTED PURSUANT TO STATE LAW WITH A 16.50% INCREASE; CONFIRMING THE DATE OF THE SECOND BUDGET PUBLIC HEARING; PROVIDING FOR INCORPORATION OF RECITALS, AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Yaffe moved the item to the floor, and Mayor Tricoche seconded the motion.

Council Member Salver stated that he supports the rollback rate, and the town's goal should be to have a millage rate similar to Bal Harbour's. He said he intends to vote against the proposed millage rate, because he was in support of the rollback rate.

ACTION: Council Member Yaffe made a motion to approve the resolution. Mayor Tricoche seconded the motion, and it passed 5-1 on a poll vote with Council Member Salver opposing.

4. **Consideration and Approval** of a resolution adopting a Tentative Budget for the Fiscal Year commencing October 1, 2023 and ending September 30, 2024.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, ADOPTING A TENTATIVE BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024; CONFIRMING THE DATE OF THE SECOND BUDGET PUBLIC HEARING; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN AFFECTIVE DATE.

Vice Mayor Fuller moved the item to the floor, and Mayor Tricoche seconded the motion.

ACTION: Vice Mayor Fuller made a motion to approve the resolution. Mayor Tricoche seconded the motion, and it passed 5-1 on a poll vote, with Council Member Salver opposing.

5. **Announcement** of the Second Budget Public Hearing scheduled for Wednesday, September 27, 2023 at 6:30 p.m.

PUBLIC COMMENT

Frances Neuht, 1060 Kane Concourse, came forward and complained that the Second Budget Public Hearing and the Bridge Workshop were set near a Jewish holiday.

Vice Mayor Fuller responded that the Council made certain the Second Budget Hearing did not coincide with a Jewish holiday. He explained that by law, the Town must hold these meetings within a specific time. He stated that the purpose of the bridge meeting is to inform the public and to solicit feedback from the residents.

Council Member Salver clarified that the Second Budget Public Hearing was not in conflict with a Jewish holiday.

PUBLIC COMMENT CLOSED

ADJOURNMENT:

There being no further business the meeting adjourned at 6:48 p.m.

MAYOR

ATTEST:

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR COUNCIL MEETING

A Regular Council Meeting was held on Wednesday, September 13, 2023 at 7:00 p.m. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Council Members responded:

Mayor Elizabeth Tricoche

Vice Mayor Joshua Fuller
Council Member Molly Diallo
Council Member Robert Yaffe

Council Member Teri D'Amico
Council Member Isaac Salver

Council Member Stephanie Bruder absent.

SPECIAL PRESENTATION: There were no special presentations.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Vice Mayor Fuller pulled Items #1-1 and #1-2 from the agenda. Mayor Tricoche pulled Item #7 for discussion.

Council Member Salver asked if Item #17 should be deferred since, Council Member Bruder, the sponsor, was not present. Council Member Yaffe replied that Council Member Bruder had asked the Town Manager to proceed with the item although she was not present.

TOWN MANAGER'S REPORT:

The Town Manager reported on the following:

- In-person and virtual presentation meetings by Atkins on September 26th and September 28th respectively
- Special council meeting for Council Members to respond to questions from the public after the bridge meetings
- Possible special council meeting in October to go over and assess all the public feedback that was received, following the bridge meetings in September.

Vice Mayor Fuller stated that Atkins was going to oversee the meetings and presentations. He said that Atkins won't be able to respond to all of the questions and comments from the residents, so he would like to make himself available; and was assuming the Council would like to be present to field any queries. In addition, since Atkins was hosting the live meeting on the 26th and the Zoom meeting on the 28th, the town would also need to record its own meetings if they were held, given that there will be more than two Council members present. He proposed having a brief workshop where people could ask questions and get answers. He said it would just be conversation, nothing would be decided.

Town Manager Lasday responded that the Atkins meetings will be held on September 26th and 28th respectively, and it would be up to the Council to decide when the workshops would be held. Vice Mayor Fuller suggested holding the workshops immediately following the Atkins meetings.

Mayor Tricoche proposed holding a special council meeting in October prior to the regular council meeting. The Town Manager responded that the meeting would need to be held on a different date in October, because the notice period might not have ended by then. Vice Mayor Fuller stated that he would like to publicize the meeting; its purpose is to address any questions that residents may have immediately following the Atkins meetings. Town Attorney Geller opined that since there will be no vote on the matter, the meeting will be treated as a workshop rather than a special council meeting.

- The Town Manager asked the Council about holding a separate event or including a community picnic for the residents at the Art Festival. Mayor Tricoche responded that it makes more sense to hold a different event. Council Member D'Amico stated that she preferred to expand the Children's area over the picnic for the residents. Vice Mayor Fuller enquired as to whether it was the consensus of the Council to host a town picnic for the residents on a different day. It was the consensus of the Council that a town picnic or something similar be held at a different time.
- Town Manager Lasday asked the Litigation Committee – Mayor Tricoche, and Council Members Salver and Yaffe – to provide available dates for a meeting, as there are some matters that need to be brought before them for resolution. It was the consensus for the Town Clerk to provide a few date options.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Yaffe reported he attended the first meeting of the Florida League of Cities Policy Committee on Finance, Taxation, and Personnel Policy in Orlando. He explained that to get ready for the legislative session, which will begin in January, there are three meetings scheduled for September, October, and November, respectively. They will formulate positions on policy that defend the rights of municipalities and Home Rule, which is important because council members will be visiting Tallahassee to represent the town in the near future.

Council Member Salver reported he attended the Miami-Dade County League of Cities meeting, which was also attended by Council Member Diallo. He presented a draft ordinance that the Board of County Commissioners had written and proposed, seeking to supersede the work being done locally by the constituents. He gave the example of how a single-family home wishing to add a driveway might need extra County approval. All the municipalities in the county have backed the efforts of the Miami-Dade County League of Cities' to have the Board of County Commissioners rescind this ordinance. Council Member Salver further reported that he supports the rollback rate and opposes raising the millage rate, just as he did at the Town's Budget hearing. He also attended the Children's Trust Budget hearing. He mentioned that the Children's Trust budget will surpass \$2 Million for the first time, with 90% of the funds going toward funding children's programs in the County, of which Bay Harbor Islands is a beneficiary. He added he would be attending the Florida League of Cities' Trustees and Board of Directors meetings in Ft. Myers on September 20th at no expense to the town. He reminded the council members that Miami-Dade County League of Cities will be hosting a conference on best practices on October 11th.

Council Member D'Amico reported she attended a Florida League of Cities meeting in Orlando. She expressed her desire to join the Florida League of Cities' Transportation Committee. She informed the council that she would be going away for a short while.

Council Member Diallo reported that at the Miami-Dade County League of Cities event last week, she learned about a few issues that are happening in the County and how they affect the town. She expressed gratitude to everyone who contributed to the 9/11 event and pride in the town for participating in the Children's Trust Program. She stressed the value of the program to the local kids and commended the work that staff has already completed.

Mayor Tricoche encouraged the residents to send their questions or comments regarding the bridge to the Town Clerk, the Town Manager, or directly to the Council Members.

Vice Mayor Fuller informed parents watching the budget hearing or the regular council meeting live, that they should know the meetings are well-planned and were not purposefully scheduled to coincide with the Miami Beach Senior High Open House. The town was left with no other choice. He expressed his gratitude to the Chief of Police and to the staff for the 9/11 event. He stated that he attended the Florida League of Cities meeting last week. He also mentioned he was honored to be named Vice-Chair of the Federal Advocacy Committee, and he currently serves on the Land Use and Economic Development Committee and the Federal Advocacy Committee.

PUBLIC COMMENT

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and stated that she was proud of being a resident of the Town. She congratulated Town Manager Lasday, Assistant Town Manager Rosado, and the Police Chief for the 9/11 event. She suggested adding speed bumpers to mitigate speeding.

Council Member D'Amico explained to Ms. Kennedy FDOT oversees the road, and the town must adhere to the law in order to install the speedbumps. Mayor Tricoche informed the audience that the Police Chief is already developing a potential substitute for speed bumps that might still be equally successful. According to Town Manager Lasday, they had a conversation with a vendor that other towns use at the schools. This vendor installs cameras all around the school and issues tickets to anyone found speeding in a school zone. Additionally, the town and the County need to come to an agreement regarding new speed bump regulations. She said the Town Manager may put this item on the agenda for October.

Council Member Salver stated that he was not in support of any traffic ticketing system.

Frances Neuhut, 1060 Kane Concourse, came forward and complained that Church by the Sea was dumping into the stormwater drains and about the council approving the project.

Gustavo Ortega, 10350 West Bay Harbor Drive, came forward and spoke about his candidacy for the Miami-Dade County Public Schools District 3 School Board.

COMMITTEE REPORTS:

Chair Kathleen Kennedy came forward and provided the Parks & Recreation Committee's Report:

- She asked the Council about the procedures for removing a committee member for failure to attend up to three consecutive meetings.

Mayor Tricoche responded that during her tenure on the Committee, a member was not permitted to skip three meetings in a row. Town Clerk Hamilton informed the Council of a resolution that requires the Committee Liaison to notify the Town Clerk, who is to notify the Town Council of the absences. The Council would then determine whether to replace the member after they miss three consecutive meetings.

Vice Mayor Fuller asked that the item be placed on the next agenda for the Council to decide whether to keep the members on the Committee. He also informed Ms. Kennedy that new members must apply before being appointed, if they wish to serve.

- Ms. Kennedy reported that seniors cannot enroll in computer classes, but the Town Manager is attempting to get the matter back on track. The Town Manager explained that the regulations for the Children's Trust program forbids use of the rooms by others when their program is in session (from 1:30 p.m. to 6:00 p.m.), but staff is looking into other options. Mayor Tricoche suggested the senior programs be made available earlier in the day. She asked the Town Manager to provide an update on this matter to the Council.
- Ms. Kennedy gave an update on the outside programs; 20 people had a great time when they got together in the yellow taxi. The seniors would like to return to St. Augustine; they also want to visit the Caribbean on a Virgin Cruise.

Council Member Salver asked whether the person they are trying to remove had been contacted by the Committee Liaison, Chair Committee, or Town Manager.

Committee Liaison Regine Watson came forward and stated that the member who Ms. Kennedy is referring missed the meeting yesterday for the third time in a row. They brought this up to see if the Council would like the committee to investigate it further.

Council Member Salver stated that he is aware that people sometimes miss meetings. The committee members should be made aware that removal from the committee occurs after three consecutive missed meetings, and they should be given the option to resign or remain on the committee, instead of facing removal.

Vice Mayor Fuller recommended that they are informed once they miss the second meeting, rather than the third.

Mayor Tricoche asked if a package can be prepared when new members join explaining the rules including missing meetings. Town Clerk Hamilton responded that the application package includes the relative information.

Committee Liaison Watson also informed the Council that registration for the computer classes was already opened, and the classes will start in October.

CONSENT AGENDA: Set for approximately 7:55 p.m. *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

1. **Consideration and Approval** of the following Town Council Meeting Minutes.
 1. ~~Regular Council Meeting – February 1, 2023~~
 2. ~~Regular Council Meeting – March 8, 2023~~
 3. Special Council Meeting - March 14, 2023
2. **Consideration and Approval** of an agreement between the Town and David Caserta Government Relations, Inc. for consulting services related to government relations efforts at the State level.
3. **Consideration and Approval** of a proposal in the amount of \$143,040.00 from BCC Engineering, Inc. to prepare the design for the structural repairs to the Water Way Bridge #875102.
4. **Consideration and Approval** of annual premiums for health, life, disability, dental and vision insurance providers for the 2023-2024 Fiscal Year.
5. **Consideration and Approval** of a proposal for insurance (general, professional, automobile, property, and workers' compensation) from Florida Municipal Insurance Trust (Florida League of Cities) for the 2023- 2024 Fiscal Year in the amount of \$608,401.
6. **Consideration and Approval** of a property insurance policy for the Shepard Broad Causeway Bridge from AXIS Surplus Insurance Company, Starstone Specialty Insurance Company, and Lloyds of London for a term beginning October 1, 2023 to September 30, 2024, with a total premium not to exceed \$471,012.
8. **Consideration and Approval** of a Continuing Services Agreement for Asphalt and Concrete Work With M&M Asphalt Maintenance, Inc. D/B/A All County Paving.
9. **Consideration and Approval** of a Resolution for the second extension of the Lease Agreement between the Sunshine Gasoline Distributors, Inc., and the Town of Bay Harbor Islands for operation of a motor fuel service station and convenience store at 1501 Broad Causeway, Bay Harbor Islands, Florida.

A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, PROVIDING FOR THE APPROVAL OF THE SECOND LEASE EXTENSION AGREEMENT BETWEEN THE TOWN OF BAY HARBOR ISLANDS AND SUNSHINE GASOLINE DISTRIBUTORS, INC., A FLORIDA CORPORATION; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR AN EFFECTIVE DATE.

ACTION: Mayor Tricoche made a motion to approve the Consent Agenda. Council Member D'Amico seconded the motion, and it passed unanimously on a poll vote.

7. **Consideration and Approval** of a contract with Round Star Southeast, LLC. for the Town's youth recreation soccer program.

Mayor Tricoche thanked everyone for their hard work in putting together the programs. She asked if the contract in front of the Council is for this year. Town Manager Lasday confirmed that some of the programs have begun while the contract is being finalized. This particular contract is ready for the Council's approval. Mayor Tricoche expressed concern that Round Star employees were helping the kids while their contract was still pending.

Parks & Recreation Director Watson came forward and informed the Council that Round Star was providing services for the aftercare program. Mayor Tricoche was concerned that these businesses were providing services to minors for an entire month while the contract was still being negotiated. Ms. Watson stated that most of their programs began late this year and that they are far behind schedule. The soccer company began coming out this week to meet the kids. They have not yet provided any services, and their staff has undergone a background check. Mayor Tricoche questioned the delay in providing programs to the children and why vendor was providing services for a week without a contract. Ms. Watson informed the Council that parents paid and had been waiting for aftercare for a month. Contracts and negotiations prevented some programs from starting. Because the parents were upset, they agreed to let the coaches meet the kids while the contract was being negotiated. Mayor Tricoche inquired about the procurement process, since these programs always began in August, and parents rely on them to begin on time. Ms. Watson explained that the procurement process had changed.

Vice Mayor Fuller concurred with the mayor's comments and raised a few concerns about the matter. He stated that no one else on behalf of the town should be interacting with the children, until the contract process has been completed—not just negotiated but completed. He said that accepting money from the parents for a program for which the town does not have a contract to provide that service is another problem. The town would have established a scenario and actual liability for collecting money for services that it is unable to render, if the Council found a problem with the contract. He requested that no one, on behalf of the Town, speak with the kids again or accept any funds from a parent for a program, until the contract is fulfilled.

Ms. Watson agreed with the mayor. She clarified that although the programs usually begins in August, she was unaware of the changes in the procurement procedures. Mayor Tricoche asked when the procurement process was initiated.

Fausto Vargas, Procurement Officer, came forward and clarified that the Request for Proposals, which is brand new, was started two months prior. Mayor Tricoche asked what was new, since this program has been part of the aftercare for several years. Mr. Vargas responded that the town must abide by rules and regulations when issuing the RFPs, and the solicitation documents were new.

Vice Mayor Fuller replied that, in essence, it was too late because the town had missed the window. He stated that rather than promising something the town cannot deliver or putting the kids in danger, he would prefer that the services not be provided.

Mayor Tricoche stated that she found it unacceptable that the town was accepting services from a contractor who did not have a contract with the town. Mr. Vargas outlined the RFP process.

Council Member Yaffe explained that the Council was attempting to convey that the program should not have begun because a contract was not in place. It makes no difference what the procedure is or why it took so long, the Council is making it clear that no program requiring a contract and payment of funds should begin until the contract has been entered into with the vendor and the town.

Mayor Tricoche stated that she would vote to move this item forward because it was necessary, but she was extremely worried that it occurred at all. She was also unsure if this goes against any of the town's established agreements.

Council Member D'Amico questioned whether the town was required to give money back. Vice Mayor Fuller clarified that if the Council votes against the agreement, the town will have to return the funds. If they vote in favor of the agreement, no funds will need to be returned.

Council Member Salver asked why the town was using a company based out of New York/Delaware instead of a local company. Mr. Vargas responded that an Evaluation Committee reviewed the solicitation and determined the company offered the best program for the town. Ms. Watson responded that she thought the winning bidder had a local branch. Council Member Salver stated that the town should support local companies.

Council Member Diallo asked if there were pending contracts for other afterschool care programs. Town Manager Lasday responded that the town attorney is working on three more contracts for upcoming programs. Council Member Diallo asked if the soccer program was the only one currently in operation, or if there were any other programs in operation with pending contracts.

Ms. Watson responded that flag football started without a contract. Vice Mayor Fuller expressed his dissatisfaction. He mandated that the town complete agreements for any programs it will use for the upcoming school year by June 1st. He also asked that all flag football activities stop until the agreement was signed.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and stated that the tennis instructor's contract was up, and she would like his contract to be reviewed, because he neglects the tennis courts.

PUBLIC COMMENT CLOSED

ACTION: Mayor Tricoche made a motion to approve the contract with Round Star Southeast, LLC. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

ORDINANCES ON SECOND READING:

10. **Consideration and Approval** of an ordinance on Second Reading amending Article 1 of Chapter 5 of the Town Code entitled "Buildings and Construction" creating a new Section 5-5.2 related to the monitoring of construction site activities, including demolition, and specified new construction. Sponsored by Council Member Robert Yaffe.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO BUILDING AND CONSTRUCTION ACTIVITIES; AMENDING ARTICLE 1 OF CHAPTER 5 ENTITLED BUILDINGS AND CONSTRUCTION, CREATING A NEW SECTION 5-5.2 RELATED TO THE MONITORING OF CONSTRUCTION SITE ACTIVITIES, INCLUDING DEMOLITION AND SPECIFIED NEW CONSTRUCTION; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Council Member Yaffe moved the item to the floor and Council Member Salver seconded the motion.

Council Member Yaffe explained that the ordinance offers seismic monitoring for multi-residential sites, increased monitoring on construction sites for nearby residents, and environmental regulations requiring the restoration of surrounding roadways to their original state.

Vice Mayor Fuller thanked Council Member Yaffe for sponsoring this item and said it was a very well written ordinance.

Council Member D'Amico stated that there are many standard terms that are not enforced and questioned if the ordinance was read thoroughly. She asked Chief Building Official Mike Mesa if they would be able to enforce the ordinance, if it passed. Mr. Mesa responded that the town would be able to enforce seismic monitoring for all construction sites and demolitions around town. And according to his understanding, comparable ordinances are being adopted by nearby municipalities. Council Member D'Amico replied that the developer is required by the ordinance to have a complaint section on their website and wanted to know who will monitor this requirement.

Town Planner Miller came forward and stated the town has a lengthy ordinance concerning construction and demolition sites. He explained that he was asked to review the ordinance the Town of Surfside recently adopted and draft a similar one for the town. Council Member Yaffe recalled that the square footage in Section 5 was to be 300 square feet. However, it was not included in the ordinance. Mr. Miller clarified that the 300 square feet was included in the updated ordinance. The Council acknowledged there was a scrivener's error, and the ordinance would state 300 square feet.

Council Member D'Amico voiced concerns as to who would monitor the complaints made to the developers. Vice Mayor Fuller clarified that while the town is unable to keep an eye on complaints made on the developer's website, this ordinance encourages developers to report complaints to the town if they receive them, because failing to do so would expose them to potential problems.

Chief Building Official Mesa explained that many vibration complaints are received. While some sites monitor themselves for liability reasons, this ordinance would compel them to do so and enable the town to determine whether vibrations are within permissible limits, if a complaint were received.

Council Member D'Amico stated that she would like to amend the ordinance to include additional requirements, such as bracing over time. Mr. Mesa clarified that there might be several structures inside the 300 square foot area. He said that the neighboring properties have the choice to opt-in or out of receiving this monitoring, that the developer is required to supply.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that nobody is monitoring the construction sites. She complained about Church by the Sea, reported they are dumping again on the main sewer lines, and stated that she placed a complaint with Code Enforcement.

PUBLIC COMMENT CLOSED

Council Member D'Amico asked that Church by the Sea be monitored just like other developments.

ACTION: Council Member Yaffe made a motion to approve the ordinance on second reading. Council Member Salver seconded the motion, and it passed unanimously on a poll vote.

ORDINANCES ON FIRST READING:

11. Consideration and Approval of an ordinance on First Reading amending Section 23-12(15) of the Town Code relating to projections into setback areas.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S ZONING AND PLANNING CODE BY AMENDING SECTION 23-12 OF THE CODE OF ORDINANCES ENTITLED GENERAL PROVISIONS; AMENDING SECTION 23-12(15) RELATED TO PROJECTIONS INTO SETBACK AREAS; AMENDING VARIOUS PROVISIONS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Tricoche moved the item to the floor, and Council Member D'Amico seconded the motion.

Council Member Salver asked Town Planner Miller about the rear setback for the east island on the waterway. Mr. Miller responded that the distance is 20 feet and the original deed restrictions applied. Council Member Salver asked if the ordinance permits extension of an awning or balcony into the first five feet of the 20-foot setback. Mr. Miller stated that balconies could be submerged up to six feet. Council Member Salver concluded that in theory, a 100-foot building can end up with a terrace with 14 feet to the water.

Town Planner Miller clarified that the code is composed of fundamental guidelines specific to each zoning district, in addition to a general set of zoning rules covering other topics like boat docks and awnings. He cited multiple examples from other municipalities. He stated that he was aware the Council believes that setbacks should not be significantly encroached upon, but rather that they should permit customers and residents to use their land. Awnings and balconies are covered in sections of the proposed ordinance. He stated that the entire section on architectural features was removed when the Council approved the setback ordinance in May 2023. And although the town has received permit applications, it is unable to proceed. He recommended that the Council reconsider its earlier decision to set the architectural features two feet back.

Council Member D'Amico stated she believed the town permits the two-foot setback. Mr. Miller clarified that the previous configuration was 4 feet for the front and rear and 3 feet for the side. He explained that the ordinance adopted in May eliminated planting bins, chimneys, and the general section on architectural features. The purpose was to ask the Council for clarification and to outline future implications. Council Member D'Amico discussed the reasoning for the ordinance's amendment back in May. Mr. Miller stated that the generic section for architectural features was removed city-wide.

Vice Mayor Fuller suggested the word "fixed" or "permanent" should be added after the word "no" in last line of Section 19, which states that "no awning or canopy shall extend more than five feet into the waterfront setback area or waterfront lots." He clarified that he didn't want to create conflict where individuals were unable to protect themselves from the sun.

Mayor Tricoche made a motion to amend the ordinance to include "fixed" after the word "no" which was seconded by Council Member D'Amico.

Town Planner Miller stated that he wrote this ordinance to make it applicable for the entire community, unless the Council felt different standards are needed for the east and west islands. Council Member D'Amico asked if he wanted to add this section to the ordinance once more. He confirmed.

Council Member Salver raised a concern regarding Mr. Miller's comments about acting in the best interests of the developers, and he clarified that the Council is charged with acting in the best interests of the residents, not the developers.

Mr. Miller clarified that was not his intention, but rather having the ability for homeowners to make changes to their homes, like adding gutters. Council Member Salver disagreed, pointing out that a lot of new construction has been done. He said although he supports property owners' rights, he also thinks that the Council has a duty to regulate. He believed that the Council ought to adopt a position which prohibits granting requests for architectural features that exceed permitted boundaries, as he believed enough is enough; the resident would only be permitted 20 feet, if the required setback was 20 feet.

Council Member Yaffe disagreed with Council Member Salver's comment, saying that homeowners should be permitted to choose some architectural elements and that it would be excessively harsh to turn down a request for a potential 2-inch window trim.

Council Member D'Amico mentioned the owner is granted two feet under the current ordinance. Mr. Miller clarified that no architectural features are allowed. The two feet regulation is only for the roof eaves.

Mayor Tricoche agreed with Council Member Salver and rescinded her motion to approve.

Vice Mayor Fuller made a motion to approve the ordinance to include "fixed" after "no", and Council Member Yaffe seconded the motion.

Town Planner Miller outlined the various amendments he suggested to the code, including permitting chimneys and maintaining a two-foot setback for roof overhangs. It was the consensus of the Council to table the item as the suggested list of changes were too many.

Vice Mayor Fuller withdrew his motion, and Council Member Yaffe withdrew his second.

12. **Consideration and Approval** of an ordinance on First Reading amending Sections 5-20 and 5-23 of the Town Code related to the submittal requirements for Site Development Plans application. Sponsored by Council Member Teri D'Amico.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO BUILDING AND CONSTRUCTION ACTIVITIES; AMENDING ARTICLE II OF CHAPTER 5 ENTITLED DESIGN REVIEW BOARD; AMENDING SECTION 5-20 RELATED TO THE MINIMUM CONTENTS OF PRELIMINARY PLANS SUBMITTED TO THE TOWN FOR SITE DEVELOPMENT PLAN REVIEW; ADDITIONALLY, AMENDING SECTION 5-23 RELATED TO TIME FOR SUBMITTING FINAL WORKING PLANS TO RECOGNIZE STATE MANDATED EXTENSIONS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Attorney Geller informed the Council that the item was previously heard on first reading; and it was brought back on another first reading, because significant changes were made.

Council Member D'Amico moved the item to the floor, and Council Member Salver seconded the motion.

Council Member D'Amico explained that she requested extensive changes to the ordinance, nothing that the town hasn't requested from developers.

Council Member Yaffe enquired as to whether the underlined sentences in Section 5-21 and 5-23 represented significant changes. Town Planner Miller explained the updated Exhibit A. The Council raised concerns that the ordinance contains language that needs to be revised. Town Attorney Geller stated that he drafted the ordinance, however, Council Member D'Amico felt that it did not reflect her intent.

Vice Mayor Fuller expressed concern about Section J, which talked about asking developers for photos of nearby properties that are within 500 feet or less. He thought the request was too general and asked for more details on the matter. Council Member D'Amico said she was interested in aeriels.

Council Member Yaffe informed the Council that he was unable to vote in favor of the proposed ordinance, since he could not distinguish between its new and old provisions.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the Design Review Board will keep approving site developments as long as the Council delays this ordinance. She believed the Council should have the authority to approve developments, and not the DRB. She expressed frustration about the telephone poles and destruction of all the trees by the 1177 Kane Concourse development.

PUBLIC COMMENT CLOSED

Council Member Diallo informed Council Member D'Amico that she was unable to vote in favor of the ordinance at this time, because she did not understand its purpose.

ACTION: Council Member D'Amico made a motion to approve the ordinance on first reading. Council Member Salver seconded the motion and it failed 2-4 with Vice Mayor Fuller and Council Members Diallo, Salver, and Yaffe opposing. Council Members D'Amico and Mayor Tricoche voted in favor.

DEFERRED ITEMS: There were no deferred items.

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

13. **Discussion and Possible** action related to the terms of the future lease for the gas station site.

Town Manager Lasday stated that she was asked to negotiate with Sunshine about a potential long-term lease. She was concerned with some of the terms and whether the procurement regulations were followed. Sunshine requested a five-year lease with three renewals which equates to 20 years. She asked the Council whether it was permissible as an amendment to an existing lease or if it was against procurement laws.

Vice Mayor Fuller stated that maintaining the gas station is something he supports. His main worry is that the lease would be extended despite all the unknowns surrounding the Bridge project. He suggested continuing to extend the leases until they have a better understanding of what's to come, adding that he does want a new lease once they know the plans and design.

Council Member Salver agreed with Vice Mayor Fuller, and stated he was not a big proponent of the gas station.

Council Member Yaffe expressed opposition to a long-term lease at this time, based on Vice Mayor Fuller's comments.

Mayor Tricoche asked the Council if they would be willing to do a month-to-month lease at market rate.

Vice Mayor Fuller responded that he likes the sixty-day leases. However, the town needs more flexibility, because of federal and state funding.

Council Member D'Amico expressed concern about the town losing the gas station, if a longer-term lease was not provided. Vice Mayor Fuller mentioned that the tenant is currently paying below market rent, and there was no indication of the gas station wanting to leave.

Council Member Salver said he would dislike incorporating the gas station into the bridge design at the town's expense.

Town Manager Lasday asked Town Attorney Geller if the town must follow procurement laws to issue RFPs and RFQs if it chooses to build a structure, be it a gas station or something else. Town Attorney Geller advised that if a completely new lease is needed, a new procurement procedure would be necessary. A lease amendment would require a different procedure. He suggested advising the tenants that the town would continue with 60-day extensions, until they have more on the design of the bridge.

DISCUSSION ITEMS:

14. **Discussion and Possible** action regarding Resolution No. 1132, which requires Town Council's approval prior to issuance of Request for Proposals; consideration of a revision to the resolution to provide that the Council's approval will only be required for unbudgeted RFP items. Enclosed is a copy of Resolution No. 1132 and a draft revised resolution. Introduced by Vice Mayor Joshua Fuller.

Vice Mayor Fuller stated that the purpose of adding this item to the agenda is to make the procurement process more efficient. Procurement shouldn't have to wait two months to get the Council's approval for an item that is already budgeted, needlessly prolonging the process.

Town Attorney Geller stated that the results of the RFPs will still come back to the Council.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that she finds out about purchases for other municipalities through the *Biscayne Times*. She criticized the Council for lack of transparency and for failing to provide an explanation for the increase in procurement from \$10,000 to \$20,000.

Council Member Yaffe clarified that the resolution has no monetary value. It grants the Town Manager specific authority over requests for proposals.

PUBLIC COMMENT CLOSED

ACTION: Vice Mayor Fuller made a motion to approve the resolution. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

15. **Discussion and Possible action** regarding modification of the Town's Public Comment Procedure for Town Council Meetings. Sponsored by Council Member Robert Yaffe.

Council Member Yaffe stated that while he supports citizens making public comments, he wasn't happy with the way things were being done right now. He discussed various municipalities and how they restrict public remarks to the start of the meeting. For those who wish to speak, he suggested speaker cards should be finished and submitted by the time the Good and Welfare part of the meeting is finished. Additionally, he had recommended to Town Clerk Hamilton the possibility of people completing their speaker cards online before the meeting, a feature that can be added easily on the website. He commented that he believed the decorum process was broken. He felt that going forward, the presiding officer and all subsequent presiding officers should make sure the public act appropriately and remind them to keep their conversations on topic. He believed that the Council would be better served and more productive if the speaker was prevented from deviating from the subject at hand.

Council Member D'Amico agreed with Council Member Yaffe's comments.

Council Member Yaffe stated that he contacted Miami-Dade County Ethics Committee member Jose Arroyo prior to making this proposal. He was told by Mr. Arroyo that the Presiding Officer, the mayor, oversees the meeting and has the authority to impose rules. Councilman Yaffe said that if it were decided upon, he would not be against any member of the Council alerting the public when they are straying from the subject at hand. He talked about other municipalities setting uniform rules for all and keeping public comments to the opening of the meeting.

Council Member Salver commented that the insults, yelling, and heckling, had gone out of hand, and he believed it was time to start enforcing the decorum statement.

Vice Mayor Fuller stated that he was in favor of interrupting someone who was straying from the subject. He remembered being on the opposite side of the dais, and while he agreed with Council Member Yaffe's remarks, he felt that there were occasions when he wasn't going to speak but someone—a council member or a speaker—would make a statement, and he felt compelled to correct or address it. He commented that there have also been instances when experts on the subject want to speak and felt they ought to be given the opportunity. He added the Council needs to stop this mad dash to turn in the speaker cards; there should be a cutoff point. He proposed that it would be too late if the speaker card was not turned in to the Deputy Clerk by the time the final speaker concluded.

Council Member Yaffe acknowledged that there are exceptions and believed the Presiding Officer ought to have the authority to decide whether to let the speaker speak. He recommended that the person wishing to speak should go to the Deputy Clerk and let them know they would like to speak. He believed that the reason meetings go longer than they should is because the Council waits for people to sign up. The agenda is usually available to those who regularly attend meetings, and most of them have an idea of whether they would like to speak. He reiterated that the best course of action is to move the cutoff time to the start of the meeting.

Vice Mayor Fuller concurred but added that they must figure out how a speaker would ask for an exemption to speak. He would want people to be able to speak and be allowed to share any personal knowledge or expertise they may have.

Town Attorney Geller stated that most cities allow someone from the public to speak if the Council has a question from the public, regardless of what has come before. There may be instances where someone feels compelled to pass a note to the Town Clerk or Deputy Clerk, asking for the council member or presiding officer to recognize them for a few reasons.

One general way to accomplish this is for any member of the Council to say, "Mayor, I would like to recognize a speaker."

Council Member Diallo pointed out that the decorum statement reads that anyone who makes a derogatory remark or becomes boisterous, could be asked to leave the audience. She recalled that they had never done that in her three years on the Council. She was surprised to learn that some people had been singled out for attention, which shouldn't be happening. She was aware that protocol is crucial, but she also knows that decorum has frequently been transgressed.

Town Attorney Geller stated that in addition to the Town Charter, this also pertains to Miami-Dade County's Citizen's Bill of Rights and State law, which require the public to be given the opportunity to comment on matters that will be put to a vote. He commented that every member of the Council takes this matter very seriously given the volume of comments they receive. He explained that except for strictly Council procedural matters, it would be unlawful and improper to prevent public comment on matters that were scheduled for vote.

The presiding officer is entitled to ensure that the meeting proceeds smoothly and that the Council completes its tasks on behalf of the people. He thought it was right and proper to set reasonable regulations designed to complete the business of the town, if it did not infringe upon the public's right to comment on matters being voted on. He advised that the new regulations would have to be published beforehand.

Vice Mayor Fuller said it was a good idea to have the Police Chief or Police Representative stand at the front of the group and, should they sense any disruption from the audience, to escort that individual out without interfering with the meeting.

Police Chief Noel came forward and advised that a person would need to disturb the peace for a police officer to escort them out, and the presiding officer would have to give the order.

Town Attorney Geller concurred with Chief Noel's remarks. He questioned whether it would make more sense to warn someone that they might be removed if they continue to be disruptive, rather than escorting them out. He stated that the presiding officer should be the one to give the directive to remove someone from the audience, but only after warning them.

Mayor Tricoche expressed her preference for online comment submissions for items, because it is user-friendly and allows individuals to voice their opinions. Council Member Yaffe concurred and said the comments could be read into the record. Mayor Tricoche continued promoting the online comment submission system for people who might be out of town and would like to voice their opinions on a specific item. Town Attorney Geller proposed imposing a three-minute time limit on online comments, identical to what would apply to comments made in person. Mayor Tricoche stated that a word count restriction would be sufficient, because anything beyond that would be subjective.

Council Member D'Amico commented that this is a smart idea, especially for people who are unable to attend the meetings.

Council Member Salver asked what the next step would be.

Mayor Tricoche asked Council Member Yaffe if he would like for a resolution to be drafted. It was the consensus of the Council to revisit the decorum matter by resolution at a subsequent meeting.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that she doesn't understand some of the resolutions, and the Council should make what they are discussing clearer. She mentioned the resolution on procurement that was heard today, which grants the Town Manager the authority to make procurement decisions without consulting the Council. She said when someone is off topic, it's because they didn't understand the Council. She believed that two minutes should be allowed for any post-event comments from the public.

PUBLIC COMMENT CLOSED

16. **Discussion** regarding Town Council term limits. Sponsored by Mayor Elizabeth Tricoche.

Mayor Tricoche asked the Council to consider putting an eight-year Council term limit up for public vote—a maximum of two terms for each Council member.

Council Member D'Amico believed that if the law were changed, the incumbent would have an additional eight years, and that the change would fall short of what the public is looking for. She thought the candidates should take part in the "meet the candidates" if there were no term limits, and they should encourage people to run by hosting "meet the candidates" events.

Vice Mayor Fuller stated that he has no problem trying to promote "meet the candidates" because he is a huge supporter. Term limits, however, are a distinct circumstance. With roughly 6,000 residents, the town is in a unique situation. The town has historically outperformed Tallahassee, Washington, DC, and now Miami-Dade County for the simple reason that they have built stronger and longer-lasting relationships than other municipalities with term limits. He added that Council Member Salver presided as President of the Florida League of Cities, which greatly benefited Bay Harbor Islands. He would not have been the Florida League of Cities president if he hadn't served for more than eight years. He explained that, in contrast to incumbents with term limits, the town council members who began lobbying in Tallahassee, Washington, DC, or the County ensure that they develop the kind of relationships that allow the town to receive funding from the State, the Federal government, and the County through their continued acquaintance with the Council.

Council Member Salver addressed Council Members D'Amico and Diallo, and said that, as the newest members of the Council, they would all agree that their first year is primarily spent learning. In his opinion, experience counts for Council members to be effective.

Council Member Diallo stated that the town holds elections, which uphold the democratic process. And although she was opened to receiving new ideas, she believed the Council's wisdom was valuable in its entirety, just like she values the residents coming to the meetings and expressing their opinions. She believes there is a good balance in the Council, and she does not support term limits. Elections are held so that people can cast ballots and make decisions. She stated that the town might lose incumbents and candidates due to the new requirements for the financial disclosure form. Based on that criterion, she was quite concerned about the Council's future. She said she doesn't disagree with diversity; rather, she believes that the public has made up its mind.

Mayor Tricoche stated that the people should make the final decision on the matter. They should have the right to vote on whether to impose eight-year term limits, just as they made it very evident that they did not want to see the building height limits extended.

Council Member Yaffe stated that he has been a member of the Council for the longest, and he understands both sides of the arguments. He recalled that the citizens' petition to restrict the height limit was successful in gathering enough signatures to be included on the ballot. He stated that there has never been a time when a resident asked for term limits in the years he has served on the Council, and he does not oppose term limits. He thought it might be a good idea to include a question on the ballot asking the people if they supported term limits. He discussed that term limits were being pushed in other municipalities.

Vice Mayor Fuller added that institutional knowledge adds huge value to the Council.

Council Member Salver asked about the threshold for voters' initiative to get on the ballot.

Town Attorney Geller responded that, without consulting the Charter, he thought it was predicated on the proportion of voters who are registered, estimating between 7% and 10%.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that surrounding municipalities have term limits, yet the Town doesn't. She felt that the last election was an embarrassment, and they refused to participate in "meet the candidates." She felt that term limits should be decided by the people, and that she hired an attorney to assist with this matter. She was dissatisfied with how there was so much misinformation revolving the elections. She complained that the *Newsweek* containing the candidate's information came out after the elections.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and stated that she agreed with Council Member Yaffe's comments, but she disagreed with the mistreatment of staff by some of the Council Members. She mentioned she was proud of the mayor for bringing this item forward.

Council Member Salver referred to Ms. Neuhut's comment that the *Newsweek* was published following the election. He recommended moving the qualifying deadline from one month before the elections to earlier dates, like January or February, to avoid these problems.

Council Member D'Amico agreed with moving up the qualifying deadlines.

Town Manager Lasday recommended that the qualifying dates be pushed forward in light of early voting.

17. **Discussion** regarding the possibility of the Town helping to facilitate residents who live in the Condominium Association who are being bombarded with high, high special assessments in obtaining grants that are available for them from the State. Sponsored by Council Member Stephanie Bruder.

Council Member Yaffe informed the Council Miami-Dade County has a program that offers financial assistance to condominium owners to help them pay special assessments that may arise from building recertification. To receive assistance up to \$50,000 for addressing and paying special assessments arising from rehabilitation and repairs owing to the applicable building integrity certification requirements, he provided the various incomes per household can earn to qualify. He noted that the information is on the Miami-Dade County's website. He explained that the assistance is through a long-term loan that must be paid back. To guarantee that the money is being used properly, the loan will also be paid to the condominium association, rather than to the owner. He suggested that this information be made available on the Town's website.

Council Member D'Amico explained that her condominium received a loan for something similar, and that they had to go through several stages to receive the funds.

Council Member Yaffe responded that it is a personal loan program. He explained that condominium loans are different because, particularly in older buildings, windstorm insurance may not be available or may be cancelled, and banks require insurance to secure the funds, putting the burden on the unit owner, who may then face a large assessment.

Mayor Tricoche explained that her four-unit building is ineligible for a condominium loan, if the association does not generate \$100,000 in revenue. Therefore, each unit owner must have cash on hand or obtain a loan.

Vice Mayor Fuller concurred that *Newswaves* should carry this information. He suggested caution be exercised with the terminology the town employs in relation to this program, as the town is merely informing of the loan's availability; and not endorsing or advocating for it.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and thanked Council Members Bruder and Yaffe for bringing the item forward. She stated that the seniors benefit greatly from this program, because certain associations are taking advantage of their financial situation.

Council Member Yaffe mentioned that the program will give up to \$50,000 with a 40-year repayment schedule. The extremely low payments will be computed at 0% interest.

Frances Neuht, 1060 Kane Concourse, came forward and stated that while this was a very good program, it wouldn't be required if everything was done correctly and in accordance with the code. She urged the Council to act with greater kindness and transparency. She stated that people losing their homes because of not being informed of the seriousness of unpaid special assessments should never have occurred. She said the program is only a band-aid; it doesn't solve the problem.

PUBLIC COMMENT CLOSED

ADJOURNMENT:

There being no further business the meeting adjourned at 10:26 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF BROAD CAUSEWAY BRIDGE
REPLACEMENT WORKSHOP**

A workshop of the Town Council was held on Tuesday, September 26, 2023, at 9:17 p.m.
Upon roll call the following members responded:

Mayor Elizabeth Tricoche	
Vice Mayor Joshua Fuller	Council Member Molly Diallo
Council Member Isaac Salver	Council Member Robert Yaffe

Council Members Stephanie Bruder and Teri D’Amico were absent.

ROLL CALL:

1. Council Discussion and Public Comment.

The Council met to continue discussion and to accept input from the public following the Broad Causeway Bridge Replacement workshop held by Atkins. No member of the public indicated they wished to be heard.

ADJOURNMENT:

There being no discussion or public comment, the meeting adjourned at 9:20 p.m.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF FINAL BUDGET PUBLIC HEARING

A Final Budget Public Hearing was held on Wednesday, September 27, 2023 at 6:30 p.m. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Council Members responded:

Mayor Elizabeth Tricoche

Vice Mayor Joshua Fuller

Council Member Stephanie Bruder

Council Member Molly Diallo

Council Member Yaffe

Council Member Isaac Salver joined the meeting at 6:37 p.m.

Council Member Teri D'Amico was absent.

1. **Announcement** of the proposed FY 2024 property tax rate of 3.1728 mills per \$1,000 taxable value. The "rolled-back" millage rate is 2.7234 mills per \$1,000 taxable value.

Town Manager Lasday announced that the FY 2024 Millage Rate is 16.50% more than the rolled-back rate needed to fund expenditures and expenses for the Fiscal Year beginning October 1, 2023 and ending September 30, 2024.

2. **Consideration** and **Approval** of a resolution adopting a final millage rate of 3.1728 mills for the Fiscal Year 2023/2024, which is 16.50% greater than the rolled back rate of 2.7234 mills.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, MIAMI-DADE COUNTY, FLORIDA, ADOPTING A FINAL MILLAGE RATE FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024; ANNOUNCING THE ADOPTED FINAL MILLAGE RATE OF 3.1728 MILLS, WHICH IS GREATER THAN THE ROLLED BACK RATE OF 2.7234 MILLS, COMPUTED PURSUANT TO STATE LAW; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Bruder moved the item to the floor, and Mayor Tricoche seconded the motion.

Council Member Bruder suggested the budget be discussed before setting the millage rate.

Town Attorney Geller explained that the millage rate must be approved before a vote is taken on the budget. He advised that the Council may discuss anything related to the rollback rate, but the law requires the millage rate to be voted on before the budget, because the budget cannot exceed the amount of money that the millage rate will yield.

Council Member Bruder thanked the staff for working hard on the budget and for making it simple for the Council and the public to understand. She expressed concern regarding recent events and suggested changes to some budget items to move money around to reflect the needs of the town. She proposed moving \$100,000 from the funds designated for the artificial reefs to fund an additional police officer and for the transfer of \$30,000 to the Children's Trust to hire more teachers to facilitate and assist students. She explained that the more the teachers work with the children, the more they discover the deficiencies are greater than anticipated. They require additional funding because they want the program to be the greatest. She stated that she believes the Town doesn't need two reefs, and she would prefer to have just one. She also suggested reducing some of the funding for the art festival. She believed reducing private security and hours would free up \$30,000 for the Town.

Mayor Tricoche clarified Council Member Bruder's request to reallocate \$160,000, with \$100,000 going to the police, \$30,000 going to the Children's Trust, and the remaining \$30,000 going to crossing guards and/or safety.

Vice Mayor Fuller stated that he discussed adding an officer to the budget with the Town Manager and Police Chief. He asked that the Causeway Fund be used to pay for the expenses. He supported the budget request for an officer and thought the Town should improve its reputation for stationing officers on the causeway to reduce crime and discourage speeding, by having police officers stationed at the entrance and exit of the town. The Town can use the Causeway Fund, rather than the General Fund because of budgetary constraints, which are mitigated by having an officer on the causeway around-the-clock.

Town Manager Lasday reiterated that the Causeway Fund may be used to add the officer.

Council Member Bruder stated that the officer on the causeway is insufficient, and that the Town requires an additional officer. When the Causeway Fund is used, that Officer can only be on the Causeway, she explained. She stated that the timing of an incident that occurred makes the Town appear vulnerable due to lack of officers. Council Member Yaffe inquired about the incident in question. Council Member Bruder explained that there were break-ins at 2:20 p.m. She said she spoke with the Chief and concluded that the Officers have a lot going on and are used for other resources during that time, which she felt is a weakness. She continued to say that it was a very safe Town when she moved here. She added that many of the locals don't feel safe, which isn't the town's fault or the Police Chief's. Rather, it's a reflection of society, not the police force. As a result, the Town should take preventative measures, rather than respond to problems after the fact.

Police Chief Noel came forward and reported that they currently have 29 officers budgeted to them. He clarified that the event happened during the busiest time of the day when the police were at the school. The police personnel are assigned based on the volume of traffic. An officer is typically assigned to both the east and west islands. Depending on their location on the island, the officer tasked with policing in the west alone might not be able to apprehend the offender in under a minute. He thought that designating one officer to work on 96th Street and another to either the east or west island, depending on the need of the day, would help discourage criminal activity.

Mayor Tricoche asked how many of the 29 officers budgeted they currently have. Police Chief Noel responded that the department does not have a Deputy Chief. There is one vacancy, and they are processing a new officer. He explained that the hiring process is lengthy. Two officers were being processed, but one did not make the cut. Mayor Tricoche acknowledged that there are 27 police officers on the force, as well as a Deputy Chief and one Officer vacancy.

Vice Mayor Fuller stated that he was not opposed to having two officers added to the force, but one should remain on the causeway. He asked Council Member Bruder if she planned to get the money for the additional officer from the art festival security. He explained that using private security in conjunction with the Town's officers is significantly less expensive than using the officers for that purpose, and it also frees up the officers to patrol the other islands at the same time. They are attempting to prevent art theft. He prefers that the officers continue to patrol the islands. He said he would be opposed to removing security from the art festival, because he believed it was one of the more important aspects of the festival and would prevent the Town's officers from being distracted from their duties.

Mayor Tricoche asked Vice Mayor Fuller if he would be amenable to having one artificial reef as opposed to two, which would open \$130,000 from the budget. Vice Mayor Fuller disagreed because one of the reefs is ready to go, and the second one, the larger one, is part of the overall pitch, when dealing with trying to get funds for the bridge. As he's gone through the evaluations, when dealing with the federal government, the US Department of Transportation, they found that is a huge portion of the evaluation for the environment impact. Since it is being used in tandem with the Causeway, the town is gaining advantages over other communities across the nation. It accomplishes two goals; it improves the residents' quality of life and raises the likelihood of obtaining federal funding.

Council Member Bruder asked which reef was nearly finished. Vice Mayor Fuller responded that he could only say so much because they are in the Cone of Silence as the artificial reef is up for bid. He clarified that the second reef is for the kayak launch. Council Member Bruder stated that while she recognized the value of the reef on the causeway, she did not see the necessity for the reef for the kayak launch. She proposed canceling the art festival entirely if that doesn't work, because funding for more officers needs to be secured somehow. She went on to say that because of necessity and a tight budget, they are unable to take money from other departments. She stated that she is the biggest fan of art festivals, but when it comes to safety, the art festival must give way.

Council Member Yaffe stated that it was decided that funds from the Causeway Fund will go toward funding the officer who will be devoted to the Causeway. Regarding the tot lot, he thought that the Town assessed impact fees or TDR funds could be used to resolve any problems there. He didn't think it was appropriate to take funds out of the budget to deal with the tot lot.

Council Member Bruder inquired about the addition of the second police officer. Chief Noel explained the need to hire the two officers. He said one would be paid from Causeway Funds, but he was unsure where the funding for the other officer would come from. Mayor Tricoche inquired about the anticipated cost per officer. Chief Noel responded that he believed the officers' starting salary is \$69,000, which does not include insurance. Council Member Salver proposed multiplying the required amount by 1.5. Mayor Tricoche stated that the required amount is \$103,500 multiplied by a factor of 1.5.

Council Member Salver inquired about the number of officers in Bal Harbour. Chief Noel responded that he was unaware of the number of officers employed by Bal Harbour, but Surfside has more officers than Bay Harbor Islands. Council Member Salver asked the Chief, aside from the incident, if he had observed a general increase in crime. Chief Noel said in surrounding cities, but not in Bay Harbor Islands.

Council Member Salver asked how many officers were on duty at any given time. Chief Noel said four to five officers were needed, with a minimum of three. Mayor Tricoche mentioned that the Town occasionally has three officers at the school and inquired if there were any other officers assigned to the islands. Chief Noel responded that the officers stationed at the school are always on call and listening to radios, and if an incident occurs those three officers would respond. Mayor Tricoche reiterated that the three officers on duty are the only ones working and that there are no other officers patrolling the Town. Chief Noel confirmed.

Mayor Tricoche questioned whether hiring people expressly for that shift was the intention and whether this was a staffing issue. Chief Noel affirmed that he would appoint one officer specifically for the east/west island and another for the causeway. Mayor Tricoche acknowledged that the other three officers might be at the school and those two might be working the shift.

Council Member Bruder stated that although the Town has license plate readers, there are situations when they are insufficient and comparing Bal Harbour and Surfside to the Town does not compare favorably enough, because people travel across the causeway to get to these locations. She stated that in her opinion, some of the town's shortcomings are situational. She said being proactive over reactive is her preferred approach. She stated that the locals believe there isn't community policing and that the Town needs police officers to carry this out. The police have more technology than the Town has ever had, which is a huge help, but it won't always be the solution. Plus, the town has fewer police than before.

Council Member Yaffe applauded the police for distributing safety flyers to the community. He appreciated seeing the Police Department put forth such an effort. Chief Noel also stated that a full-time marine patrol officer has been hired.

Vice Mayor Fuller said he has stated his support for more police officers. He objected to the fact that it was the second budget meeting and that promises made to residents were being reconsidered. He felt this should have been discussed in advance, and he would have preferred more specifics of cutting specific items, such as the reef, which is a one-time expense rather than an annual cost. The town has held two meetings, and this should have been discussed at the prior meetings. He would rather add the officer and find a way to do so, even if it meant taking money from the reserves to cover the cost, because the Town isn't taking something from the residents while still providing the officers.

Mayor Tricoche asked if impact fees would apply to the reefs as they are intended to be used to give back to the town. Additionally, if impact fees could be allocated for the reef, it might be possible to provide for everyone's needs. Town Manager Lasday stated that they would need to draft and implement a policy regarding impact fees for Parks & Recreation. Mayor Tricoche asked the Town Attorney if that would work since they are technically resolving an issue that affects the Town. Town Attorney Geller stated that he wouldn't rule it out if done correctly, but research and evidence of need are required. If done correctly and the data backs it up, impact fees can be used.

Vice Mayor Fuller inquired as to whether a portion of the causeway funds could be used for the reef on the causeway. If so, those funds could then be used to cover the interior reef. Town Manager Lasday said that since there must be an environmental component, the one along the causeway aids the Town in receiving federal funding. Vice Mayor Fuller stated that the causeway reef could be moved from the regular budget to the causeway fund.

Mayor Tricoche asked how much money would be returned to the budget, if the Causeway Reef was relocated. Town Manager Lasday said \$250,000 has been set aside for artificial reefs under Parks & Recreation's Capital Improvement section. As it is required to apply for federal funds; she proposed taking half of that and using causeway funds to fund the causeway reef, which would make \$125,000 available to support the police officer from the general fund.

Council Member Salver stated that he has been trying to wrap his head around the fact that three of the officers are assigned to the school from 8:00 a.m. to 4:00 p.m. Chief Noel clarified that the officers are only assigned during drop-off and pick-up. Council Member Salver responded that sounded more reasonable.

Vice Mayor Fuller clarified that the Causeway Fund will provide \$125,000 of the \$250,000 allotted in the General Fund for the reef. Mayor Tricoche clarified that the funding for the police officers will come from reallocated funds, of which only \$100,000 will be used for the officer and another from the Causeway Funds. The total funding will come from the impact fees. The Children's Trust will receive the remaining \$25,000 in reallocated funds.

PUBLIC COMMENTS

Frances Neuhut, 1060 Kane Concourse, came forward and asked if there were any new items in the 23/24 budget, why the millage rate was higher than in Bal Harbour, why property taxes had increased by 30%, why tenants in the Business District and apartment buildings were being unfairly affected, and why the operations and stormwater drains of the Causeway Island Bridge were increased in the 23/24 budget compared to the 22/23 budget. She requested the definition of propriety and enterprises.

Vice Mayor Fuller asked if the security funds for the art festival were being trimmed. Town Manager Lasday asked if the art festival would begin at 6:30 p.m. on Friday and if they were taking \$30,000 out of its budget.

Council Member Bruder stated that residents had complained about the time of closure of the lanes and that she was opposed to closing early for set-up.

ACTION: Council Member Bruder made a motion to approve the resolution at 7:09 p.m. Mayor Tricoche seconded the motion, and it passed unanimously on a poll vote.

3. **Consideration and Approval** of a resolution adopting a final budget for the Fiscal Year commencing October 1, 2023 and ending September 30, 2024.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, ADOPTING A FINAL BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024; PROVIDING FOR EXPENDITURE OF BUDGETED FUNDS; PROVIDING FOR BUDGETARY CONTROLS; PROVIDING FOR GRANTS AND GIFTS; PROVIDING FOR BUDGET AMENDMENTS; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Tricoche moved the item to the floor, and Council Member Bruder seconded the motion.

PUBLIC COMMENTS

Harry Bruder, 1281 94 Street, came forward and thanked the Council for their excellent work and service. He mentioned that the town could use another police officer. He stated that the previously mentioned incident was not the only one. He stated that criminals are aware of the empty police cars strategically placed on the streets. He expressed concerns about not being proactive, and stated his belief incidents would continue to occur. He added that nothing was more important than the residents' safety. He spoke of his enjoyment of the picnics and the art festivals, as they bring people together. He opposed not adding another officer due to the lack of funds. He stated that Bay Harbor Islands is no longer as safe as it once was.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and stated that the Town requires an additional officer. She said the Council should not put a price on her security and on the Police Department. She said the police department in town is the best and praised an officer for his interactions with the participants at the Children's Trust program. She also stated that she would pay additional taxes for additional security.

PUBLIC COMMENTS CLOSED

Mayor Tricoche moved to amend the budget to add two police officers, (one is to be funded from the causeway funds and one is to be funded from reallocated funds from the artificial reef) for the artificial reef to be paid from causeway funds, for the tot lot repairs to be funded from impact fees and TDR funds, and for the remaining balance to go to the Children's Trust. Council Member Bruder seconded the motion, and all voted in favor.

ACTION: Mayor Tricoche made a motion to approve the budget as amended at 7:19 p.m. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

ADJOURNMENT:

There being no further business the meeting was adjourned at 7:20 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF FINAL BUDGET PUBLIC HEARING**

A Final Budget Public Hearing was held on Wednesday, September 27, 2023 at 6:30 p.m. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Council Members responded:

Mayor Elizabeth Tricoche

Vice Mayor Joshua Fuller

Council Member Stephanie Bruder

Council Member Molly Diallo

Council Member Yaffe

Council Member Isaac Salver joined the meeting at 6:37 p.m.

Council Member Teri D'Amico was absent.

1. **Announcement** of the proposed FY 2024 property tax rate of 3.1728 mills per \$1,000 taxable value. The "rolled-back" millage rate is 2.7234 mills per \$1,000 taxable value.

Town Manager Lasday announced that the FY 2024 Millage Rate is 16.50% more than the rolled-back rate needed to fund expenditures and expenses for the Fiscal Year beginning October 1, 2023 and ending September 30, 2024.

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ADOPTED FINAL MILLAGE RATE OF 3.1728 MILLS,
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2.7234 MILLS, COMPUTED PURSUANT TO STATE LAW;
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PROVIDING FOR AN EFFECTIVE DATE.**

Council Member Bruder moved the item to the floor, and Mayor Tricoche seconded the motion.

Council Member Bruder suggested the budget be discussed before setting the millage rate.

Town Attorney Geller explained that the millage rate must be approved before a vote is taken on the budget. He advised that the Council may discuss anything related to the rollback rate, but the law requires the millage rate to be voted on before the budget, because the budget cannot exceed the amount of money that the millage rate will yield.

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Council Member Yaffe stated that it was decided that funds from the Causeway Fund will go toward funding the officer who will be devoted to the Causeway. Regarding the tot lot, he thought that the Town assessed impact fees or TDR funds could be used to resolve any problems there. He didn't think it was appropriate to take funds out of the budget to deal with the tot lot.

Council Member Bruder inquired about the addition of the second police officer. Chief Noel explained the need to hire the two officers. He said one would be paid from Causeway Funds, but he was unsure where the funding for the other officer would come from. Mayor Tricoche inquired about the anticipated cost per officer. Chief Noel responded that he believed the officers' starting salary is \$69,000, which does not include insurance. Council Member Salver proposed multiplying the required amount by 1.5. Mayor Tricoche stated that the required amount is \$103,500 multiplied by a factor of 1.5.

Council Member Salver inquired about the number of officers in Bal Harbour. Chief Noel responded that he was unaware of the number of officers employed by Bal Harbour, but Surfside has more officers than Bay Harbor Islands. Council Member Salver asked the Chief, aside from the incident, if he had observed a general increase in crime. Chief Noel said in surrounding cities, but not in Bay Harbor Islands.

Council Member Salver asked how many officers were on duty at any given time. Chief Noel said four to five officers were needed, with a minimum of three. Mayor Tricoche mentioned that the Town occasionally has three officers at the school and inquired if there were any other officers assigned to the islands. Chief Noel responded that the officers stationed at the school are always on call and listening to radios, and if an incident occurs those three officers would respond. Mayor Tricoche reiterated that the three officers on duty are the only ones working and that there are no other officers patrolling the Town. Chief Noel confirmed.

Mayor Tricoche questioned whether hiring people expressly for that shift was the intention and whether this was a staffing issue. Chief Noel affirmed that he would appoint one officer specifically for the east/west island and another for the causeway. Mayor Tricoche acknowledged that the other three officers might be at the school and those two might be working the shift.

Council Member Bruder stated that although the Town has license plate readers, there are situations when they are insufficient and comparing Bal Harbour and Surfside to the Town does not compare favorably enough, because people travel across the causeway to get to these locations. She stated that in her opinion, some of the town's shortcomings are situational. She said being proactive over reactive is her preferred approach. She stated that the locals believe there isn't community policing and that the Town needs police officers to carry this out. The police have more technology than the Town has ever had, which is a huge help, but it won't always be the solution. Plus, the town has fewer police than before.

Council Member Yaffe applauded the police for distributing safety flyers to the community. He appreciated seeing the Police Department put forth such an effort. Chief Noel also stated that a full-time marine patrol officer has been hired.

Vice Mayor Fuller said he has stated his support for more police officers. He objected to the fact that it was the second budget meeting and that promises made to residents were being reconsidered. He felt this should have been discussed in advance, and he would have preferred more specifics of cutting specific items, such as the reef, which is a one-time expense rather than an annual cost. The town has held two meetings, and this should have been discussed at the prior meetings. He would rather add the officer and find a way to do so, even if it meant taking money from the reserves to cover the cost, because the Town isn't taking something from the residents while still providing the officers.

Mayor Tricoche asked if impact fees would apply to the reefs as they are intended to be used to give back to the town. Additionally, if impact fees could be allocated for the reef, it might be possible to provide for everyone's needs. Town Manager Lasday stated that they would need to draft and implement a policy regarding impact fees for Parks & Recreation. Mayor Tricoche asked the Town Attorney if that would work since they are technically resolving an issue that affects the Town. Town Attorney Geller stated that he wouldn't rule it out if done correctly, but research and evidence of need are required. If done correctly and the data backs it up, impact fees can be used.

Vice Mayor Fuller inquired as to whether a portion of the causeway funds could be used for the reef on the causeway. If so, those funds could then be used to cover the interior reef. Town Manager Lasday said that since there must be an environmental component, the one along the causeway aids the Town in receiving federal funding. Vice Mayor Fuller stated that the causeway reef could be moved from the regular budget to the causeway fund.

Mayor Tricoche asked how much money would be returned to the budget, if the Causeway Reef was relocated. Town Manager Lasday said \$250,000 has been set aside for artificial reefs under Parks & Recreation's Capital Improvement section. As it is required to apply for federal funds; she proposed taking half of that and using causeway funds to fund the causeway reef, which would make \$125,000 available to support the police officer from the general fund.

Council Member Salver stated that he has been trying to wrap his head around the fact that three of the officers are assigned to the school from 8:00 a.m. to 4:00 p.m. Chief Noel clarified that the officers are only assigned during drop-off and pick-up. Council Member Salver responded that sounded more reasonable.

Vice Mayor Fuller clarified that the Causeway Fund will provide \$125,000 of the \$250,000 allotted in the General Fund for the reef. Mayor Tricoche clarified that the funding for the police officers will come from reallocated funds, of which only \$100,000 will be used for the officer and another from the Causeway Funds. The total funding will come from the impact fees. The Children's Trust will receive the remaining \$25,000 in reallocated funds.

PUBLIC COMMENTS

Frances Neuhut, 1060 Kane Concourse, came forward and asked if there were any new items in the 23/24 budget, why the millage rate was higher than in Bal Harbour, why property taxes had increased by 30%, why tenants in the Business District and apartment buildings were being unfairly affected, and why the operations and stormwater drains of the Causeway Island Bridge were increased in the 23/24 budget compared to the 22/23 budget. She requested the definition of propriety and enterprises.

Vice Mayor Fuller asked if the security funds for the art festival were being trimmed. Town Manager Lasday asked if the art festival would begin at 6:30 p.m. on Friday and if they were taking \$30,000 out of its budget.

Council Member Bruder stated that residents had complained about the time of closure of the lanes and that she was opposed to closing early for set-up.

ACTION: Council Member Bruder made a motion to approve the resolution at 7:09 p.m. Mayor Tricoche seconded the motion, and it passed unanimously on a poll vote.

3. **Consideration and Approval** of a resolution adopting a final budget for the Fiscal Year commencing October 1, 2023 and ending September 30, 2024.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, ADOPTING A FINAL BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024; PROVIDING FOR EXPENDITURE OF BUDGETED FUNDS; PROVIDING FOR BUDGETARY CONTROLS; PROVIDING FOR GRANTS AND GIFTS; PROVIDING FOR BUDGET AMENDMENTS; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Tricoche moved the item to the floor, and Council Member Bruder seconded the motion.

PUBLIC COMMENTS

Harry Bruder, 1281 94 Street, came forward and thanked the Council for their excellent work and service. He mentioned that the town could use another police officer. He stated that the previously mentioned incident was not the only one. He stated that criminals are aware of the empty police cars strategically placed on the streets. He expressed concerns about not being proactive, and stated his belief incidents would continue to occur. He added that nothing was more important than the residents' safety. He spoke of his enjoyment of the picnics and the art festivals, as they bring people together. He opposed not adding another officer due to the lack of funds. He stated that Bay Harbor Islands is no longer as safe as it once was.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward and stated that the Town requires an additional officer. She said the Council should not put a price on her security and on the Police Department. She said the police department in town is the best and praised an officer for his interactions with the participants at the Children's Trust program. She also stated that she would pay additional taxes for additional security.

PUBLIC COMMENTS CLOSED

Mayor Tricoche moved to amend the budget to add two police officers, (one is to be funded from the causeway funds and one is to be funded from reallocated funds from the artificial reef) for the artificial reef to be paid from causeway funds, for the tot lot repairs to be funded from impact fees and TDR funds, and for the remaining balance to go to the Children's Trust. Council Member Bruder seconded the motion, and all voted in favor.

ACTION: Mayor Tricoche made a motion to approve the budget as amended at 7:19 p.m. Council Member Bruder seconded the motion, and it passed unanimously on a poll vote.

ADJOURNMENT:

There being no further business the meeting was adjourned at 7:20 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF BROAD CAUSEWAY BRIDGE
REPLACEMENT WORKSHOP**

A virtual workshop of the Town Council was held on Thursday, September 28 2023, at 7:12 p.m.

Vice Mayor Joshua Fuller and Council Member Molly Diallo were in attendance.

Mayor Elizabeth Tricoche, Council Members Stephanie Bruder, Teri D'Amico, Isaac Salver, and Robert Yaffe were not present.

1. Council Discussion and Public Comment.

Vice Mayor Fuller explained the intent of the workshop was to provide the public with the opportunity to discuss or have questions posed to the Council regarding the bridge project.

Resident Karen Weiss asked about the overall financing of the project. She said it was her understanding that the Town will apply for funding that may cover up to 80% of the cost. She asked how the rest will be covered. Vice Mayor Fuller explained the intent to provide for the bridge to be built without imposing any taxes or any other issue with cost to the residents. He explained that the town is applying for federal, state, and county grants. The remaining portion, which has to be paid regardless, at least 20% of it will be coming from toll revenue. The town has put aside certain dollars and will continue to do so to meet those requirements. The Council envisions funding the project from toll dollars, rather than from any additional tax.

Ms. Weiss asked what the 20% estimate would be. Vice Mayor Fuller responded that the 20% will depend on the ultimate alternative selection. There are different prices for the alternatives.

Ms. Weiss asked about the cost. Vice Mayor Fuller mentioned the cost for Alternative 1, the High-Level Fixed Bridge between \$200 to \$250,000 Million and Alternative 2, the Mid-Level Movable Bridge of between \$400,000 to \$450,00 Million.

Ms. Weiss asked what the expected increase in the cost for the toll was and how would it be adjusted for Bay Harbor's and Surfside's residents, who use the bridge for main access. Vice Mayor Fuller informed Ms. Weiss there is nothing in front of the Council with regard to changing the amount for the toll. Right now, everything is being done on the current toll revenue. The Town is not allowed to charge Bay Harbor's residents a different toll number than the general public, per the agreement with the State. There isn't going to be a discount. There will not be any additional charge either. Also, there is no plan to remove the Annual Pass.

Ms. Weiss asked if the Annual Pass was a way to mitigate the cost. Vice Mayor Fuller stated that anybody can get an Annual Pass. It's the same price for everybody.

Ms. Weiss asked if there is a limitation on how Annual Passes are offered. Vice Mayor Fuller said there are no restrictions.

Resident Jack Karson asked which bridge option the Town favors. He expressed support for Alternative 1 without the drawbridge.

Vice Mayor Fuller stated that the point of the workshop is for the public and the citizens to let the Council know what they prefer. No decisions have been made. The Council is looking at the alternatives; it's a discussion right now. The Council wants to see what the general public wants, what the cost is going to be, and will evaluate all of these things. There will be additional workshops to further the conversation to make those determinations.

ADJOURNMENT:

There being no discussion or public comment, the meeting adjourned at 7:32 p.m.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR COUNCIL MEETING

A Regular Council Meeting was held on Wednesday, October 11, 2023 at 7:09 p.m. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Council Members responded:

Mayor Elizabeth Tricoche

Vice Mayor Joshua Fuller

Council Member Stephanie Bruder

Council Member Molly Diallo

Council Member Isaac Salver

Council Member Robert Yaffe

Council Member Teri D'Amico was absent.

Mayor Tricoche requested a moment of silence in observation of the horrible events that were occurring around the world.

SPECIAL PRESENTATION:

1. Proclamation - Red Ribbon Week – October 23-31, 2023

Mayor Tricoche read the proclamation into the record proclaiming October 23-31 as “Red Ribbon Week” in Bay Harbor Islands.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Vice Mayor Fuller deferred Items 3A, 3B, and 3D.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Diallo stated that her thoughts are with everyone in light of what is going on in the world. She emphasized the Council's top priority is the safety of the town's residents.

Council Member Bruder stated that her prayers are with everyone, especially the families of the Americans killed, and hostages taken. She mentioned the Governor's message to a group of citizens in support of Israel and specific steps he intends to take. She also thanked the officers for collaborating with other agencies to keep the Town safe.

Council Member Yaffe expressed condolences and prayers for the Israelis and Americans who have been killed or kidnapped and are still missing. He stated that many families in South Florida, Bay Harbor, and around the world have been deeply affected by the tragic events that are taking place in Israel.

Council Member Yaffe further thanked the police for the increased security that makes the community feel safe. He reported attending a meeting with State Representative Fabian Fasabe, who stated that he would work to obtain as much funding for the Town's projects as possible, and if the Council happened to be in Tallahassee through organized meetings, he would assist in setting up meetings with other agencies and officials. He mentioned he was in Orlando last week for a Policy Committee meeting; they meet several times a year to emphasize Home Rule.

Council Member Salver shared the sentiments of the other Council Members. He reported attending the Florida League of Cities Executive Board meeting and the Florida Municipal Loan Council meeting in Ft. Myers last month, at no cost to taxpayers. He was named Chairman of the Florida Loan Council. He noted that with interest rates rising, the Florida Municipal Loan Council is developing more appealing products for communities.

Vice Mayor Fuller stated that there are no words to describe the horrors occurring in Israel. His heart goes out to the victims of all forms of terrorism. There is no justification or excuse. They persecuted Israelis, Americans, and people of various nationalities. His heart goes out to the hostages and survivors.

Mayor Tricoche stated that the Town is working very hard, and that security is heightened. They are fully aware of what is going on. She urged people to report any potential threats. She reminded the public that mental health support is available during this difficult time and encouraged them to seek help, if they need it.

PUBLIC COMMENT

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Frances Neuhut, 1060 Kane Concourse, came forward and complained that people are beginning to avoid visiting BHI because of the Town's severe parking shortage in the Business District. She said the characteristics that set BHI apart are gradually disappearing. She stated that the municipal garage at 1165 95th Street, 1185 97th Street, and the monthly parking pass for Bay Harbor businesses are all sold out. She spoke about the Council relocating Town Hall and the police department into modulars. She complained about the giving away of parking at a minimal cost, the Council increasing density, and selling TDRs.

TOWN MANAGER'S REPORT:

Town Manager Lasday reported that she researched the shuttle's advantages over the Freebee. The Town only received one bid for the shuttle. The shuttle costs \$149,600 for an 18-person bus and \$158,000 for a 25-person bus. An additional Freebee car costs \$132,000 dollars. She informed the Council that she is working on the matter and will bring it up for discussion at the next meeting to determine whether they would prefer to pursue a Freebee vehicle or an 18 or 25 passenger bus. She stated that the Town can use the gas tax to pay for its share of the Freebee cars, which would balance the cost, because 50% comes from FDOT and the other 50% comes from the General Fund. The CITT funds are also available for Freebee. The town has several hundred thousand dollars in CITT funds and a couple hundred thousand dollars in gas tax revenue. The question is how the Council intends to spend those transportation dollars.

Council Member Bruder asked the Town Manager if her previous statement that the Freebee is heavily used, and the shuttle is rarely used was still accurate. Town Manager Lasday responded that the Freebee is becoming more popular and is in high demand.

Mayor Tricoche asked how many Freebee vehicles will be needed, and if the cost will be able to be covered by repurposing those funds. Town Manager Lasday responded that the town will be able to cover the costs because it has a large amount of CITT and gas tax funds. The only reason this is an issue is that the town only received one proposal, which is from the current user. She asked the council if they wanted to bring this item back in November or make it a discussion item, for which she could provide ridership statistics and possibly have a Freebee representative present. Council Member Salver inquired about the cost of the shuttle bus and/or Freebee. Town Manager Lasday responded both have been budgeted. It was the consensus of the Council for this topic to be discussed on the November Council Meeting agenda and for a Freebee representative to be present.

Town Manager Lasday reported that an item will be placed on the November 8, 2023 meeting agenda for Atkins to review the public comments from the Bridge Workshop with the Council and get some direction.

COMMITTEE REPORTS:

2. Update on the Art Festival.

Vice Mayor Fuller stated that the festival is on budget or below. The goal is to have 60 to 80 artists. He said he wanted to put everyone's food ideas on the table. The event will be set up with the music stand on one side, the bar on the other, and food on both sides. The four main cuisines will be Mexican, American, Israeli, and Greek, with kosher options available. For budgetary reasons, they do not intend to have any musical headliners. He thought the high school band worked well the last time as people flocked to the event to see the local children perform. The goal is to bring as many people as possible. Work is being done for the children's area. The event coordinators will contact the Police Chief about possibly moving the higher-end restrooms to a different location, so that they could provide more space and expand the children's area.

Council Member Salver inquired as to whether they had spoken with the property owner of the 1108 building to see if they could use some of their parking lot. Vice Mayor Fuller responded that there have been discussions with owners of various buildings, and they are working to see what they can do.

Mayor Tricoche suggested that the Bank of America building donate use of their parking lot to the town for the event. Vice Mayor Fuller replied that the event coordinator will contact Bank of America. Council Member Salver believed it would be more effective if the Council contacted the owner of the building.

Mayor Tricoche believed that, despite its small size, the children's section was very popular at the previous art festival. She suggested that the children's section be relocated to the Bank of America parking lot. Vice Mayor Fuller explained that there must be continuity between the festival and the children's area, and the parking lot must be arranged for security purposes. He said he didn't know which would work best, but as long as the town can use the parking lot, that would be great. Council Member Bruder proposed using the Bank of America parking lots and the drive-through area for the restrooms.

Vice Mayor Fuller stated that they are working to expand the advertising beyond the 33154-zip code to attract more people to the festival. Council Member Bruder inquired about the types of artists who will be attending the festival. According to Vice Mayor Fuller's conversations with the event coordinator, the better artists are also encouraging other artists to participate. He added the fact that they gave artists enough notice to sign up was a huge plus. Mayor Tricoche stated that some of the pricing on the artwork ranged from \$500 to \$50,000, and she asked if they could bring art in the lower cost range because it is not realistic for some of the residents. Vice Mayor Fuller explained that finding a middle ground is difficult because if the town wants to attract high-end artists, they charge more for their work. He is attempting to attract a diverse range of artists.

The Vice Mayor further informed the Council that the Chief of Police has been rearranging and significantly improving the traffic flow. They have also contacted the surrounding communities for assistance with traffic flow. Council Member Salver inquired about the festival's schedule for that Friday. Vice Mayor Fuller explained that they will still hold it at the same time, but the difference will be improved traffic flow. He added that they would market the event, share the routes prior to the event, change the routes, add more officers to flag down directions, and make every effort to ensure the traffic flows as smoothly as possible.

Council Member Salver stated that assistance is needed from the Town of Surfside for it to work, perhaps to have them flash their signal lights and have someone control traffic from their end. Vice Mayor Fuller responded that the Chief and himself have had multiple conversations with the other municipalities and have considered potentially adding some of the town's officers to assist on those streets.

Chief of Police Lindsley Noel came forward and informed the Council that officers will be stationed all the way down to Harding and Collins Avenues. They will collaborate with the school as to the traffic flow. Council Member Yaffe stated his observation that the waiting time at the traffic lights on Byron Avenue is much longer than it used to be, and that there should be a push to those municipalities to shorten the wait time for the weekend of the festival. Chief Noel suggested speaking with the Chiefs of Surfside and Bal Harbour to see if the traffic signals could be operated manually.

Council Member Bruder stated that residents also complained about the road closures, as they were unaware of them. She suggested that the street closures be announced in advance so that residents are not caught off guard.

Vice Mayor Fuller stated that they would work on improving the publication of the shuttle bus location, if the town has one left or if they need to rent one; so that the residents can travel into town on that day. Mayor Tricoche suggested the golf cart be used as a shuttle. Vice Mayor Fuller responded that the golf cart will be used for security.

Vice Mayor Fuller asked the Council if they agreed with the food choices. Council Member Salver explained that Israeli and Greek food are similar, and that kosher food is only required for Saturday, not Sunday. He expressed that although they will be serving kosher food, people will not be forthcoming to buy it. Cuban food and Poke bowls were suggested.

CONSENT AGENDA: Set for approximately 7:55 p.m. (*Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.*)

3. Approval of the following meeting minutes:
 - A. ~~Regular Council Meeting - April 10, 2023~~
 - B. ~~Special Council Meeting - May 1, 2023~~
 - C. Special Council Meeting - May 4, 2023
 - D. ~~Regular Council Meeting - May 10, 2023~~
4. **Consideration and Approval** of a Resolution regarding Budget Amendment No. 4 to the FY 2022-2023 Budget.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING BUDGET AMENDMENT NO. 4 FOR THE ANNUAL BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023, ADJUSTING REVENUES AND EXPENDITURES OF FUNDS ESTABLISHED AND REFLECTED IN EXHIBIT "A" ATTACHED HERETO; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

5. **Consideration and Approval** of a Resolution permitting Hatzalah of Miami-Dade County, Inc., d/b/a Hatzalah of South Florida, to park on town property while providing emergency medical service.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AUTHORIZING HATZALAH OF MIAMI- DADE COUNTY, INC., D/B/A HATZALAH OF SOUTH FLORIDA, TO PARK THEIR EMERGENCY AMBULANCE ON TOWN PROPERTY; PROVIDING FOR INCORPORATION OF RECITALS AND AN EFFECTIVE DATE.

6. **Consideration and Approval** of a Resolution updating the list of authorized signers for the town's accounts with Bank of America.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AUTHORIZING DEPOSITS AND WITHDRAWALS OF TOWN FUNDS IN CERTAIN ACCOUNTS; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

7. **Consideration and Approval** of a Resolution extending the contract with Marcum LLP, for auditing services for Fiscal Year ending September 30, 2023 and Fiscal Year ending September 30, 2024, pursuant to the September 9, 2022 Engagement Letter.

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF
BAY HARBOR ISLANDS, FLORIDA, EXTENDING THE
AUDIT ENGAGEMENT LETTER WITH MARCUM LLP;
PROVIDING INCORPORATION OF RECITALS; AND
PROVIDING FOR AN EFFECTIVE DATE.**

8. **Consideration and Approval** of Task Order #3 with Atkins North America, Inc. for the amount of \$2,847,254 for the Project Development and Environmental (PD&E) Study Services for the Broad Causeway Drawbridge Replacement Project.

ACTION: Council Member Bruder made a motion to approve the Consent Agenda. Vice Mayor Fuller seconded the motion, and it passed unanimously on a poll vote.

Council Member Salver requested to introduce a representative from Hatzalah. He noted that the Council previously approved a resolution for the company.

Abraham Rosenfeld, Hatzalah, 9725 Broadview Terrace, came forward and stated that he and his family relocated from New York to Miami. In 2001, he established Hatzalah in Los Angeles. He is a senior member of the organization and an extremely active fundraiser and responder. Hatzalah has 250 volunteer responders and 16 operational ambulances that cover South Beach to West Palm Beach. He expressed gratitude and humility to the Council at their willingness to be open and flexible, and willing to work with his organization. He stated that several government agencies have been exceptionally responsive and proactive in meeting their needs and requests. Collaborations are expanding, and they are fostering and engendering goodwill all around.

Council Member Bruder asked Mr. Rosenfeld to explain their service to the public and to provide their contact information. She announced that the service is available to everyone and is not limited to a specific religion.

Mr. Rosenfeld stated that the first thing they do when they answer a call is to find out if the caller is experiencing an emergency. He said the only reason Hatzalah's number isn't posted is because they're still relatively new in South Florida. Anyone can call (305) 919-4900, 24/7 for any reason. A patient will never be denied care by the organization because of their religion or the type of call they receive.

Council Member Salver asked the Town Attorney about publishing the number in the town newsletter. The Town Attorney responded that the Council could include the phone number in the newsletter. Council Member Bruder also suggested posting the phone number on the town's website.

Mr. Rosenfeld went on to say that Hatzalah is pleased to respond promptly, professionally, and efficiently while providing the best patient care possible. They cover the 33154-zip code, and their resources include two ambulances, 28 responders, six (6) in training, paramedics, EMTs, and doctors on call.

He said one day, he hopes to work with the town to pursue mass casualty incident responses. Other Hatzalah provide this service in other cities across the nation. All service from Hatzalah is free, and the workers are all volunteers. Donations to the organization go toward restocking supplies. They offer the most cutting-edge medical care, have the newest technology and equipment, and are always striving for expansion.

The Council thanked Mr. Rosenfeld for his service to the community.

Mayor Tricoche asked Town Attorney Geller if someone who had submitted a public speaker card to address a previously voted item on the Consent Agenda, had to be given permission to speak. Town Attorney Geller said that it was the mayor's decision, but he doesn't think they have to. Mayor Tricoche decided against calling the speaker and continued with the meeting.

ORDINANCES ON SECOND READING:

9. **Consideration and Approval** of an ordinance on Second Reading amending Sections 20-5 and 20-6 of the Town Code to increase the monthly rate for water service to pass through the increase charged by Miami-Dade County Water & Sewer Department.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS AMENDING SECTIONS 20-5 AND 20-6 OF THE CODE OF BAY HARBOR ISLANDS TO INCREASE THE MONTHLY CHARGE FOR WATER SERVICE TO \$5.48 PER ONE THOUSAND GALLONS AND TO INCREASE THE MINIMUM MONTHLY SERVICE CHARGES FOR EACH WATER METER TO \$25.49; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and said there were similarities between Items 9 and 10. The town's businesses and citizens pay a hefty price for the water. She questioned the Council's plans to address environmental issues and the reason for their antiquated infrastructure.

Town Manager Lasday stated that the recently passed budget includes significant funding for infrastructure and sewer projects.

Vice Mayor Fuller stated that every resident in BHI receives an annual or semi-annual report delivered via mail on the quality of water that is tested.

Mayor Tricoche mentioned a free water testing kit can be obtained from Home Depot.

PUBLIC COMMENT CLOSED

ACTION: Mayor Tricoche made a motion to approve the ordinance on second reading. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

10. **Consideration and Approval** of an ordinance on Second Reading amending Sections 20-9 of the Town Code to increase the monthly base and flow charges for sewer service to pass through the increase charged by Miami-Dade County Water & Sewer Department.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING SECTION 20-9 OF THE TOWN CODE TO INCREASE THE MONTHLY BASE AND FLOW CHARGES FOR SEWER SERVICE TO \$24.19 AND \$9.25 RESPECTIVELY; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICT AND REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that there are no regulations. Many of the newly opened restaurants in the town have grease traps, for which they must pay impact fees based on the quantity of seats they offer. After spotting one of her tenants abusing the system, she contacted DERM. She believed that certain eateries are not paying the impact fees. She said that although the Church is exempt from paying taxes, they shouldn't be spared the consequences of their recently constructed second-floor restaurant and kitchen. She asked if the Church is paying the impact fees.

Town Manager Lasday stated that DERM oversees grease traps. They are not within the town's jurisdiction. DERM inspects and receives fees from the businesses. The Town is spending funds for new sewer manhole covers and ejector pumps. This year's budget contains a tremendous amount of effort that covers many sewer projects.

Mayor Tricoche requested that Code Compliance spends more time in the Business District monitoring compliance. The Town Manager also stated that they would contact DERM.

PUBLIC COMMENT CLOSED

ACTION: Council Member Bruder made a motion to approve the ordinance on second reading. Council Member Yaffe seconded the motion, and it passed unanimously on a poll vote.

ORDINANCES ON FIRST READING: There were no ordinances for first reading.

DEFERRED ITEMS: There were no deferred items.

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

11. **Discussion and Appointment** of a Council Member to the Board of Trustees of the Town's Retirement System.

ACTION: Council Member Yaffe made a motion to appoint Council Member Salver to the Board of Trustees of the Town's Retirement System. Vice Mayor Fuller seconded the motion, and it passed unanimously.

12. Discussion regarding demolition of Town Hall facilities. Sponsored by Council Member Stephanie Bruder.

Council Member Bruder stated that it is time to discuss demolition of the Town Hall. Council Member Yaffe asked about the timeline for removing all staff from Town Hall. Council Member Bruder responded that the staff will be moved into the modulars first. The town will need to obtain and approve a demolition contract. She said they can build a budget-friendly building. Town Manager Lasday informed the Council that the staff will be in modulars within 60 days and that they are working on all the details. She believed that the demolition could take place 90 days after they relocate all the servers. The staff will be relocated first, followed by the servers. Mayor Tricoche inquired about the demolition schedule. The Town Manager said the demolition will occur shortly after the move is completed, after the Council approves the contract. The contract is being reviewed by the Town Attorney. Mayor Tricoche asked how long the attorney will take to review the contract. The Town Attorney stated that he would have it done by the end of the week. The Council acknowledged the move could occur in about 120 days.

Council Member Yaffe inquired about the timetable for working with the FIU School of Architecture. Town Manager Lasday responded that Council Member Bruder and the team met with FIU, completed a needs assessment, inspected the site, and reviewed the survey. They are currently working on the rendering for Town Hall and the parking garage.

Fausto Vargas, Procurement Officer, came forward and said that FIU should provide the first set of renderings on October 26, 2023. Town Manager Lasday reminded the Council that the staff's recommendations for engineers will be on the November 8th Council Meeting agenda. She said an RFP/RFQ may be issued for the design of Town Hall, or the Council may choose to work with one of the engineers who was chosen to be the engineer in charge of the project. Council Member Yaffe asked when the project is expected to be finished. The Town Manager said two to three years.

Vice Mayor Fuller suggested that the demolition be well-coordinated to cause as little disruption to residents as possible. He said he is aware that it will be extremely inconvenient, but anything that can be done to reduce the inconvenience will be greatly appreciated.

The Council unanimously agreed for the demolition of Town Hall to proceed.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and expressed excitement that the Council is moving forward with the construction of a new garage. She stated that the parking lot in Block 11 is completely full. She urged the Council to consider how to accommodate parking for the Business District, before proceeding with the demolition.

PUBLIC COMMENT CLOSED

DISCUSSION ITEMS: There were no discussion items.

ADJOURNMENT:

There being no further business the meeting adjourned at 10:44 p.m.

MAYOR

ATTEST

TOWN CLERK

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 3.

ITEM: Consideration and Approval of a Resolution adopting Title VI Plan update for the Town of Bay Harbor Islands. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (42 U.S.C. Section 2000d). Enclosed are the updated Title VI Plan and the proposed resolution.

DESCRIPTION:

The Town of Bay Harbor Islands is committed to ensuring that no person is excluded from participation in or denied the benefits of Town transit services on the basis of race, color, or national origin, as protected by Title VI in Federal Transit Administration (FTA) Circular 4702.1.B. Furthermore, the Town of Bay Harbor Islands as a recipient of American Recovery and Reinvestment Act (ARRA) Economic Stimulus Grant funding from the Federal Transit Administration is required to have a Title VI plan which complies with the federal requirements outlined in FTA 4702.1B.

The Town of Bay Harbor Islands has established a Title VI Plan detailing procedures for reporting any Title VI related complaints so that those complaints can be remedied and appropriate action taken by the Town to ensure compliance with Title VI. Appropriate Title VI notices have been placed on our Town Website as well as on our Town Hall Bulletin Board.

Federal requirements, FTA C 4702.1B, mandates the Title VI program be reviewed annually.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

There is no fiscal impact to adopt the Plan.

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Resolution 2024 MDT - Title VI Program Plan Update
2.	BHI Title VI Plan

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, ADOPTING TITLE VI PLAN UPDATE FOR THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Bay Harbor Islands (the “Town”) was a sub-recipient of the American Recovery and Reinvestment Act (ARRA) Economic Stimulus Grant funding from the Federal Transit Administration; and

WHEREAS, three (3) bus shelters were provided for the Town via ARRA funds; and

WHEREAS, FTA requires the sub-recipient have a Title VI plan which complies with the federal requirements outlined in FTA 4702.1B; and

WHEREAS, the Town Administration has prepared and proposed the attached “Title VI Program for the Town of Bay Harbor Islands” which complies with the federal requirements outlined in FTA 4702.1B and which has been reviewed by Miami-Dade Transit Office of Civil Rights and Labor Relations and the Town Administration with no comments; and

WHEREAS, the Mayor and Council desire to comply with the requirements of federal law otherwise, and, to that end, adopted the Title VI Program Plan June 8th, 2015 with the approval of Resolution No. 2048; and

WHEREAS, FTA C 4702.1B requires the town’s Title IV program to be reviewed annually.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Approval. The Title VI Program Plan Update for the Town of Bay Harbor Islands, attached hereto as Exhibit “A”, is hereby adopted.

Section 3. Implementation. The Town Manager or his/her designee is hereby authorized to take such action as may be necessary to implement the provisions of this resolution.

Section 4. Effective Date. This Resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED this ____ day of 20th day of March 2024.

MAYOR

ATTEST:

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS



TITLE VI PROGRAM PLAN

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (42 U.S.C. Section 2000d)

Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Tel: 305-866-6241
Fax: 305-866-4863
Website: www.bayharborislands.org

Introduction

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” (42 U.S.C. Section 2000d).

The Town of Bay Harbor Islands is committed to ensuring that no person is excluded from participation in, or denied the benefits of Town transit services on the basis of race, color, or national origin, as protected by Title VI in Federal Transit Administration (FTA) Circular 4702.1.B.

Information Notices

Title VI information notices are prominently and publicly displayed in our Town Hall posting boards.

The name and contact information of the Title VI coordinator is available on the Town’s website, at www.bayharborislands.org. Additional information relating to the Town’s nondiscrimination obligation is provided in this document.

Further information can be obtained directly from the Town’s Title VI Coordinator:

Jenice Rosado
Deputy Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Record Keeping

The Title VI Coordinator will maintain permanent records, which include, but are not limited to copies of Title VI complaints or lawsuits and related documentation, and records of correspondence to and from complainants, and Title VI investigations.

Complaints

The complainant may file a signed, written complaint no later than 180 days after the date of the alleged discrimination. The complaint procedures are described in detail herein (see Appendix A). Each complaint should include the following information:

- Full name
- Mailing address
- Contact Information (i.e., telephone number, email address, etc.)
- How, when, where and why you believe you were discriminated against, including location, names and contact information of any witnesses
- Other information that you consider significant

The Title VI Complaint Form, (see Appendix B), may be used to submit the complaint information. The complaint may be filed in writing to the Town at the following address:

Town of Bay Harbor Islands Attention:
Jenice Rosado, Assistant Town Manager
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

The Town encourages all complainants to certify all mail that is sent through the U.S. Postal Service and/or ensure that all written correspondence can be tracked easily. Complaints must be mailed to the Title VI Coordinator no later than 180 days after the date of the alleged discrimination.

All complaints alleging discrimination based on race, color or national origin in a service or benefit provided by the Town will be directly addressed by the Title VI Coordinator who shall also provide appropriate assistance to complainants, including those persons with disabilities, or who are limited in their ability to communicate in English.

Additionally, the Town shall make every effort to address all complaints in an expeditious and thorough manner. A letter acknowledging receipt of complaint will be mailed within seven days (see Appendix C). Please note that in responding to any requests for additional information, a complainant's failure to provide the requested information may result in the administrative closure of the complaint.

The Town of Bay Harbor Islands will send a final written response letter (see Appendix D) to the complainant. If the complaint is found to be not substantiated (see Appendix E), the

complainant is also advised of his or her right to:

- 1) Appeal within seven calendar days of receipt of the final written decision from the Town, and/or
- 2) File a complaint externally with the U.S. Department of Transportation and/or the FTA.

Every effort will be made to respond to Title VI complaints within 60 working days of receipt of such complaints, if not sooner.

Once sufficient information for investigating the complaint is received by the Town, a written response will be drafted subject to review by the Town Attorney. If appropriate, the Town Attorney may administratively close the complaint. In this case, the Town will notify the complainant of the action as soon as possible.

In addition to the complaint process described above, a complainant may file a Title VI complaint with the following offices:

Federal Transit Administration Office of Civil Rights Attention: Title VI Program Coordinator East Building, 5th Floor — TCR
1200 New Jersey Ave., SE Washington, DC 20590

Limited English Proficiency (LEP)

The Town of Bay Harbor Islands has a land area of .6 Square Miles. According to the 2010 Census, the Town has an approximate total population of 6,000 people, composed of the following:

Black or African American alone, percent, 2010 (a)	2.5%
American Indian and Alaska Native alone, percent, 2010 (a)	0.2%
Asian alone, percent, 2010 (a)	1.2%
Native Hawaiian and Other Pacific Islander alone, percent, 2010 (a)	0.0%
Two or More Races, percent, 2010	2.3%
Hispanic or Latino, percent, 2010 (b)	46.3%
White alone, not Hispanic or Latino, percent, 2010	49.1%

Of the Town's population over the age of 5:

- 54.4% of residents speak a language other than English at home
- 45.6% speak English at home

The Town provides information in English and in Spanish when it is requested. Residents can request translations of documents that are in English. Most Town departments have at least one or more employees that are bilingual and Spanish speakers are accommodated with a translator when requested. The Town regularly disseminates information via its website and utility bills.

The Town Title VI Policy and Complaint Procedures is hosted on the Town's web page in English and made available in other languages as requested.

The Town educates our staff and contractors on the following procedure (see Appendix F):

- a. Understanding the Title VI Policy and LEP responsibilities
- b. How to access Title VI Policy and Procedures via the Town's website.
- c. Document and resolve any language assistance deficiencies
- d. The procedure if a Title VI and/or LEP complaint is filed.

The Town will review LEP procedures annually to determine if modifications are needed to meet language assistance deficiencies.

Public Participation Plan

The Town of Bay Harbor Islands seeks to engage the public in its planning and decision-making processes. Members of the public may make statements at Council meetings, which occur on the second Wednesday of every month. Town Council agendas are available for review by the public no less than two (2) days before Council meetings. Notices of resolutions or ordinances under Council consideration are announced in print in local newspapers.

The Town continuously seeks innovative methods to engage the public in its planning and decision-making processes, as well as its outreach activities. Recent outreach initiatives include:

- Public notices in local and county wide newspapers
- Florida League of Cities
- On site posting
- Utility bills
- Inviting public inquires

Ordinances and resolutions adopted by the Town to apply for and utilize Federal and State grant funding are placed on the public hearing/meeting agenda and are subject to public notice and comment procedures.

The Town and its records are available to the public and the Town welcomes their input. The Town's Title VI Complaint Procedure is available to the public via the Town's website www.bayharborislands.org.

Decision Making Bodies

The Town of Bay Harbor Islands does not have any transit related non-elected planning boards or advisory councils or planning boards or committees. If any such committees are established in the future, this plan will be amended to depict minority representation on such committees and to describe the efforts made to encourage participation of minorities on such committees.

Transit Programs/Service Standards

The Town of Bay Harbor Islands operates a fixed route circulator service (20 passenger bus) which travels throughout the Town and into the neighboring municipalities of Surfside, Bal Harbour and North Miami. The circulator service route, however, does not utilize any of the federally funded bus shelters in the Town. The programs and/or services utilizing those bus shelters are provided and operated by Miami-Dade County Transit (MDT). You may contact Miami-Dade County Transit at www.miami-dade.gov for additional information. If the Town's route changes in the future to include stops utilizing these shelters, the Town will confer with Miami-Dade Transit to ensure the Town meets all Title VI requirements.

Transit Facilities

The Town does not have any storage, maintenance facilities or operation centers. Since the Town's fixed route circulator service is operated by a third-party contractor, all maintenance and storage is handled offsite. If there are any changes in the future, as related to Title VI, the Town will confer with Miami-Dade Transit to ensure the Town meets all requirements.

Appendices

Appendix A: Complaint Procedure

Appendix B: Complaint Form

Appendix C: Letter Acknowledging Receipt of Complaint

Appendix D: Letter Notifying Complainant That the Complaint is Substantiated

Appendix E: Letter Notifying Complainant that the Complaint is not Substantiated

Appendix F: Employee Annual Education Form

Appendix G: Record of Investigations, Complaints and/or Lawsuits

Appendix A

Complaint Procedures

Title VI of the 1964 Civil Rights Act requires that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Any person who believes he or she has been discriminated against on the basis of race, color, or national origin by the Town of Bay Harbor Islands may file a Title VI complaint by completing and submitting the agency's Title VI Complaint Form. A complaint may be filed no later than 180 days after the date of the alleged discrimination. The Town or its designated Title VI Coordinator will process complaints that are complete.

Once the complaint is received, the Title VI Coordinator will review it to determine if our office has jurisdiction. The complainant will receive an acknowledgement letter informing him/her whether the complaint will be investigated by our office.

The Town has 60 days to investigate the complaint. If more information is needed to resolve the case, the Town's Title VI Coordinator may contact the complainant. The complainant will have 10 business days from the date of the letter to send the requested information to the investigator assigned to the case. If the investigator is not contacted by the complainant or does not receive the additional information within 10 business days, the Title VI Coordinator can administratively close the case. A case can also be administratively closed if the complainant no longer wishes to pursue their case.

After the case is investigated, he/she will issue one of two letters to the complainant: a closure letter or a letter of finding (LOF). A closure letter summarizes the allegations and states that there was not a Title VI violation and that the case will be closed. An LOF summarizes the allegations and the interviews regarding the alleged incident, and explains whether any disciplinary action, additional training of the staff member or other action will occur.

If the complainant wishes to appeal the decision, he/she has 10 business days after the date of the LOF to do so.

A person may also file a complaint directly with:

Federal Transit Administration FTA Office of Civil Rights
1200 New Jersey Avenue SE Washington, DC 20590.



**Town of Bay Harbor Islands
Title VI Non-Discrimination Program
Complaint of Discrimination**

Complainant (s) Name:	Complainant(s) Address:	
Complainant (s) Phone Number:		
Complainant's Representative's Name, Address, Phone Number and Relationship (e.g. friend, attorney, parent, etc);		
Name and Address of Agency, Institution, or Department Whom You Allege Discriminated Against You;		
Names of the individual(s) Whom You Allege Discriminated Against You (if known);		
I believe the discrimination I experienced was based on: (check all that apply):	☐ Race ☐ Color ☐ National Origin	Date of Alleged Discrimination:

Mail to: Town of Bay Harbor Islands, 9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154 Attn: Jenice Rosado

This form may also be faxed to: **305-866-4863** Attn: Jenice Rosado

A complaint must be filed no later than 30 days after the date of the alleged discrimination.



**Town of Bay Harbor Islands
Title VI Non-Discrimination Program
Complaint of Discrimination**

Please list the name(s) and phone number(s) of any person, if known, that the Town of Bay Harbor Islands could contact for additional information to support or clarify your allegation(s).

Please explain as clearly as possible how, why, when and where you believe you were discriminated against. Include as much background information as possible about the alleged acts of discrimination. Additional pages may be attached if needed.

Complainant(s) or Complainant(s)Representatives Signature:
Date of Signature:

Appendix C

Letter Acknowledging Receipt of Complaint

Town Letterhead Date

Complainant's Name

Complainant's Address

Dear (Mr/Ms):

This letter is to acknowledge receipt of your complaint against the Town of Bay Harbor Islands alleging:

An investigation will begin shortly. If you have additional information you wish to convey or questions concerning this matter, please feel free to contact this office by telephoning 305-866-6241, or write to me at this address.

Sincerely,

Jenice Rosado
Assistant Town Manager/Title VI Coordinator
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Appendix D

Letter Notifying Complainant that the Complaint is Substantiated

Town Letterhead Date

Complainant's Name

Complainant's Address

Dear (Mr/Ms):

The matter referenced in your letter of (date) against the Town of Bay Harbor Islands alleging Title VI violation has been investigated.

The violation of the Title VI of the Civil Rights Act of 1964 mentioned in your letter was identified. Corrective action of this deficiency(s) is being implemented to ensure that this issue does not arise again

Thank you for bringing this important matter to our attention.

Sincerely,

Jenice Rosado
Assistant Town Manager/Title VI Coordinator
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Appendix E

Letter Notifying Complainant that the Complaint is not Substantiated

Town Letterhead Date

Complainant's Name

Complainant's Address

Dear (Mr/Ms)

The matter referenced in your letter of (date) against the Town of Bay Harbor Islands alleging Title VI violation has been investigated.

The results of the investigation did not indicate that the provisions of Title VI of the Civil Rights Act of 1964 had in fact been violated. As you know, Title VI prohibits discrimination based on race, color, or national origin in any program receiving federal financial assistance.

The Town Attorney has analyzed the materials and facts pertaining to your case for evidence of the Town's failure to comply with any of the civil rights laws. There was no evidence found that any of these laws have been violated.

I therefore advise you that your complaint has not been substantiated, and that I am closing this matter in our files.

You have the right to:

1) Appeal within seven calendar days of receipt of this final written decision from the Town, and/or

2) File a complaint externally with the U.S. Department of Transportation and/or the Federal Transit Administration at:

- Federal Transit Administration Office of Civil Rights Attention: Title VI Program
Coordinator East Building, 5th Floor TCR 1200 New Jersey Ave., SE Washington, DC
20590

Thank you for taking the time to contact us. If I can be of assistance to you in the future, do not hesitate to call me.

Sincerely,

Jenice Rosado

Assistant Town Manager

Appendix F

Employee Annual Education Form

To all employees of the Town of Bay Harbor Islands:

No person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

All employees of the Town of Bay Harbor Islands and its contractors are expected to consider, respect, and observe this policy in their daily work and duties.

In all dealings with citizens, use courtesy titles (i.e. Mr., Ms., etc.) to respectfully address the citizens without regard to race, color or national origin.

If a citizen approaches you with a question or complaint, direct him or her to contact:

Town of Bay Harbor Islands Attention:
Jenice Rosado, Assistant Town Manager
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Appendix G



List of TITLE VI Investigations, Lawsuits and Complaints

Type (Investigation, Lawsuit or Complaint)	Date of Complaint (Month/Day/Year)	Summary of Complaint (include basis of Complaint; race, color or national origin)	Status of Complaint	Action(s) Taken

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 4.

ITEM: Consideration and Approval of a resolution for Change Order No. 3 to a contract between the Town and Engineering Control Systems Corp. awarded October 19, 2022, for the BC-158 Broad Causeway Rehabilitation Construction Project. The Change Order is for \$245,000.00 to cover additional costs due to increased spall repairs and time extension of the contract because of weather days that delayed the project. Enclosed are the Change Order and proposed resolution.

DESCRIPTION:

Change order #3 for Engineer Control Systems, Corp. of a Contract Awarded on October 19, 2022, Council Meeting for the BC-158 Broad Causeway Rehabilitation Construction Providing a Time Extension and Contract Cost Due to the Increase of Spall Repairs and Weather Days.

We have encountered an additional 31% of spalling in each bridge span. The additional spall repair is being added now as a result of continued bridge deterioration from the time of design phase up to the construction phase of an estimated additional 31%.

This increase in scope would require an additional encumbrance of \$245,000.00 to accommodate the 31% estimated increase in spall repair work and materials for Engineer Control Systems, Corp.

Therefore, the contractor time has increased to 70 contractual days for the concrete spall repairs only under the bridge. In addition, the contract time will have to be increased by an additional 13 contractual days due to weather days. Finally, due to the recent FDOT Critical Findings, the contract time will have to be increased an additional 84 contractual days. This will bring the total contract time extension to 167 contractual days. The project's end date is now June 30, 2024. .

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

\$1,529,000.00 was originally allocated in the Fiscal Year 2023-2024 and the revised budget is \$2,091,276.93 for the Rehabilitation of Shepard Broad Causeway Bridge project No. BC-158, within the Causeway Fund in Account No. 401.5415.400063.000. The amount of \$245,000.00 is being requested for services needed by Engineering Control Systems Corp, under the scope of services described above. The appropriation will be within the same line item, 401.5415.400063.000, by reallocating funds from project BC-162 Waterway Bridge, which has a revised budget of \$1,563,861.

BUDGET IMPACT:

Submitted By: Rodney Carrero-Santana, Town Engineer

ATTACHMENTS

1.	Resolution - Engineering Controls - \$245,000 - Change Order No. 3
2.	BC-158 Ch Ord #3 Spall Repair Additional Cost Break Down 030924
3.	BC-158 - Weather Days
4.	BC-158 Rev Sched due Crit Find & Weather 031124

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING CHANGE ORDER NUMBER 3 IN THE AMOUNT OF \$245,000 TO THE AGREEMENT WITH ENGINEERING CONTROLS SYSTEMS CORP FOR THE BC-158 SHEPARD BROAD CAUSEWAY REHABILITATION CONSTRUCTION PROJECT BRIDGE; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 19, 2022, the Town Council authorized the Town to enter into an agreement with Engineering Controls Systems Corp (the Contractor) for the rehabilitation of Shepard Broad Causeway Bridge No. 875101 Project (BC-158); and

WHEREAS, Change Order No. 1 in the amount of \$196,594.00 for services required by FPL to connect electrical services to the bridge was approved on February 21, 2024; and

WHEREAS, Change Order No. 2 in the amount of \$347,545.00 for Emergency FDOT Critical Repairs and additional Design Services for the said repairs was approved on February 21, 2024; and

WHEREAS, the Town Council and the Contractor desire to enter into Change Order No. 3 for \$245,000 to cover additional costs for 31% increased spall repairs and materials. The contract will also have a time extension of 70 days of the contract due to the additional concrete spalls, 13 contract days due to weather days and 84 days due to the FDOT Critical Findings indicated in Change order #2.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF BAY HARBOR ISLANDS, FLORIDA:

Section 1. Recitals. The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

Section 2. Approval of Change Orders. The Town Council hereby approves Change Order No. 3 in substantially the form attached to this Resolution as Exhibit A, and in final forms to be approved by the Town Attorney.

Section 3. Authorization to Execute Change Orders. The Town Council hereby authorizes and directs the Town Manager to execute, on behalf of the Town, Change Order No. 3.

Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 20th day of March 2024.

Elizabeth Tricoche, Mayor

ATTEST:

Yvonne P. Hamilton, Town Clerk

APPROVED AS TO FORM:

GREENSPOON MARDER LLP

TOWN ATTORNEYS

BY: Joseph S. Geller, Esq.

Rodney CarreroSantana

From: Marcello D'Andrea <mdandrea@bcceng.com>
Sent: Tuesday, March 12, 2024 10:37 AM
To: Rodney CarreroSantana
Subject: RE: BC-158 - Contract Time Extension

Rodney,

As we discussed earlier, please find below a more accurate cost breakdown that the project is expected to incur due to the 31% increase in spall repairs on the underdeck, including the cost savings as a result of removing the underwater work. The additional spall repair work increases the project's cost by \$563,448.25 within Pay Item 401-70-2, however, the underwater scope removal subsidizes \$318,660.00 of this increase.

- 401-70-2 = \$1,817,575.00
 - o 31% = \$563,448.25
- However, based on the removal of the underwater scope, the project will save an estimated \$318,660.00 from the contracted work and the related MOT (42 days).
 - o 102-1 = \$16,500
 - o 102-14 = \$115,600
 - o 102-60 = \$546
 - o 102-71-15 = \$42,500
 - o 102-71-25 = \$20,345
 - o 102-74-1 = \$840
 - o 102-75-1 = \$53,025
 - o 102-76 = 420
 - o 102-89-1 = \$24,000
 - o 102-99 = \$2,100
 - o 102-115 = \$84
 - o 400-3-20 (Class III Concrete) = \$42,700
 - Total Savings from Underwater Work Removal = \$318,660

This would require a total encumbrance of **\$244,788.25** to accommodate the 31% expected increase in spall repair work to the underside of the bridge.

Thanks.

Marcello D'Andrea

Project Administrator



12444 W. Atlantic Boulevard, Coral Springs, FL 33071

t. 561.430.6290 | m. 305.333.8599 | www.bcceng.com



[illegible]

Bay Harbor Island - Emergency Repairs				Classic Schedule Layout										01-Nov-23 14:04																							
Activity ID		Activity Name		Original Duration	Actual Duration	Start	Finish	Early Start	Late Start	Early Finish	Late Finish	Total Float	Qtr 1, 2023				Qtr 2, 2023			Qtr 3, 2023			Qtr 4, 2023			Qtr 1, 2024											
													Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb										
A1187	Final Acceptance		0	0		11-Oct-23				11-Oct-23	11-Oct-23	0																									
Actual Level of Effort Actual Work				Remaining Work Critical Remaining Work				Milestone summary				Page 3 of 3										TASK filter: All Activities															
© Oracle Corporation																																					

Bay Harbor Island - Emergency Repairs				Classic Schedule Layout							02-Nov-23 12:09																
Activity ID		Activity Name		Original Duration	Actual Duration	Start	Finish	Early Start	Late Start	Early Finish	Late Finish	Total Float	Qtr 1, 2023				Qtr 2, 2023			Qtr 3, 2023			Qtr 4, 2023			Yr 1, 2024	
													Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
<																											

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 5.

ITEM: Consideration and Approval of a resolution for Change Order No. 2 to a contract between the Town and BCC/Lakes Engineering awarded on February 10, 2020 for the BC-158 Broad Causeway Rehabilitation Construction project. The Change Order is for \$96,500.00 for construction time extension due to FDOT critical findings, increased repair spall repairs, and weather days resulting in delay of the project. Enclosed are the Change Order, the resolution, and other supporting documents.

DESCRIPTION:

Based on site investigation, due to the increase in work scope for additional spall repairs and as a result of bridge deterioration from the design phase up to the construction phase, we have encountered an additional 31% of spalling in each bridge span, FDOT Critical Findings, and Weather Days.

Therefore, the CEI time has increased to *70* contractual days for the concrete repairs only under the bridge.

In addition, we need to add *13* contractual days due to the Weather Days. Finally, due to the recent FDOT Critical Findings, the contact time will be increased an additional *83* contractual days.

Therefore, the CEI time has increased to *105* contractual days.

The expected cost for this Change Order #2 - CEI increases the scope of work to add to the BCC/Lakes Engineering Contract for additional CEI Services is \$96,500.00.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

\$1,529,000.00 was originally allocated in the Fiscal Year 2023-2024 and the revised budget is \$2,091,276.93 for the Rehabilitation of Shepard Broad Causeway Bridge project No. BC-158, within the Causeway Fund in Account No. 401.5415.400063.000. The amount of \$96,500.00 is being requested for services needed by BCC/Lakes Engineering, under the scope of services described above. The appropriation will be within the same line item, 401.5415.400063.000, by reallocating funds from project BC-162 Waterway Bridge, which has a revised budget of \$1,563,861.

BUDGET IMPACT:

Submitted By: Rodney Carrero-Santana, Town Engineer

ATTACHMENTS

1.	Resolution - Lakes Engineering - \$96,500 Change Order 2-
2.	BC-158 - Weather Days
3.	BC-158 Broad Causeway - Additional Services Amendment 2

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING CHANGE ORDER NUMBER 2 TO THE AGREEMENT WITH LAKES ENGINEERING FOR CONSTRUCTION ENGINEERING INSPECTION SERVICES TO THE SHEPARD BROAD CAUSEWAY BRIDGE REHABILITATION PROJECT; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on February 10, 2021, the Town Council authorized the Town to enter into an agreement with Lakes Engineering for inspection, design, pre and post-bid services, bid analysis, contractor recommendation, and Construction Engineering Inspection Services for the rehabilitation of the Shepard Broad Causeway Bridge No. 875101 Project (BC-158); and

WHEREAS, Change Order No. 1 in the amount of \$94,275.87 for the additional construction engineering (CEI) services was approved on February 21, 2024; and

WHEREAS, the Town and the Consultant desire to enter into Change Order No. 2 in the amount of \$96,500 for the performance of the additional (CEI) services, due to FDOT critical findings, increased spall repairs, and extension of time due to delay caused by weather days.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF BAY HARBOR ISLANDS, FLORIDA:

Section 1. Recitals. The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

Section 2. Approval of Change Order No. 2. The Town Council hereby approves Change Orders No. 2 in the amount of \$96,500 in substantially the form attached to this Resolution as Exhibit A, and in final form to be approved by the Town Attorney.

Section 3. Authorization to Execute Change Orders. The Town Council hereby authorizes and directs the Town Manager to execute, on behalf of the Town, to execute Change Order No. 2.

Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 20th day of March 2024.

Elizabeth Tricoche, Mayor

ATTEST:

Yvonne P. Hamilton, Town Clerk

APPROVED AS TO FORM:

GREENSPOON MARDER LLP

TOWN ATTORNEYS

BY: Joseph S. Geller, Esq.

[illegible]



March 5, 2024

Rodney Carrero-Santana, PE, CFM, LEED AP
Town Engineer
Town of Bay Harbor Islands
9665 Bay Harbor TE
Bay Harbor Islands, FL 33154

RE: BC-158 Broad Causeway Rehabilitation – Additional CEI Services (Amendment #2)

Dear Mr. Carrero-Santana,

We are pleased to present this proposal for additional Consultant Construction Engineering and Inspection (CEI) services for the above referenced project. BCC Engineering, LLC. has been under contract and acting as the Civil Engineering consultant responsible for the CEI services during the construction of the subject project since February 2023. Our CEI Services were originally authorized under Task Work Order No. 5 that also included Design Plans and Specs, Post Design Services, and Environmental Services. At the time of TWO execution, the construction duration was estimated at five (5) months. However, once the Design Plans had been completed, and the Contract with Contractor Engineering Control Systems Corporation had been executed, the construction duration had grown to 322 calendar days (approx. 11 months). Amendment 1 to our contract was approved by Town Resolution No. 2360 on February 21, 2024, to extend our CEI services through the duration of the Contract with Contractor Engineering Control Systems Corporation.

During construction, it was discovered that the bridge had undergone significant deterioration since the design had been completed, thereby significantly increasing the quantity of spall repairs needed. Based on the additional quantities of spall repairs, the Contractor submitted a request for additional time and costs. After review, BCC recommended the granting of 70 calendar days for the additional time required to perform the additional spall repairs. In addition, BCC has documented an additional 13 calendar days of weather impacts where the Contractor was unable to pursue the work. Based on the factors above, the construction duration had now grown to 405 calendar days.

In addition, FDOT District 6 performed a critical inspection on January 12, 2024, and determined that the bridge required additional repairs which were not identified on the plans. The newly discovered deficiencies by FDOT resulted in the closure of one of two eastbound lanes to prevent vehicles from driving over the documented deficient areas. As a result of the FDOT critical findings, the EOR developed additional plans to implement these new repairs. This additional work resulted in the Contractor requesting an additional 12 weeks (84 days) to accommodate this repair work scope. Based on the factors above, the construction duration has now grown to 489 calendar days.

The purpose of this proposal is to supplement our Contract to extend our CEI services through Final Completion of the project, currently anticipated to occur on June 30, 2024.

The proposed CEI Scope of Services will remain unchanged from the original TWO and shall include:

- Project Administrator to administer the construction contract utilizing approximately 4 hours per week.
- Senior Inspector to perform daily inspections during on-going construction operations to ensure substantial conformance with Contract Documents. Inspections are based on 5-day work weeks, and 8-hour workdays.
- Daily Inspections shall be documented on Daily Report of Construction forms and shall be submitted digitally to the Town Engineer, if needed.
- Daily Inspections shall include digital photographs detailing existing conditions, construction activities, completed work, deficiencies, material failures, specification violations, unauthorized changes to the proposed work, unforeseen conditions, contract document conflicts, etc. Photographs shall be submitted digitally to the Town Engineer, if needed.
- Assist the RFI process by providing BCC's Engineer of Record with all relevant information including field observations, measurements, digital photographs, etc.
- Review and processing of the contractor's monthly invoicing for payment.
- Perform Preliminary Inspections, produce Preliminary "Work Lists" as required, and document completion of all outstanding items.
- Perform Final Inspection in conjunction with Town forces, produce Final "Punch List", and document completion of all outstanding items.

Length of Additional Services are based on a new project Final Completion Date of June 30, 2024.

BCC proposes to provide the described Additional Services on an hourly basis with a Maximum Not to Exceed amount of **\$96,330.48**. Please see the attached Summary of Tasks and Hourly Rates, Exhibit A.

Services beyond those outlined above, including increase in the scope of the Project, revisions to the work, additional site inspections, longer inspection hours, delays in the construction schedule, etc. will be provided for an additional Maximum Not to Exceed fee performed on an hourly basis at the rates indicated on the attached Summary of Tasks and Hourly Rates, Exhibit A. BCC Engineering, LLC. will provide Additional Services after receipt of written authorization by Client.

Thank you and please feel free to contact our office if you have any questions or wish to discuss any item further.

Respectfully,

William Garcia, PE
Vice President
BCC Engineering, LLC

Exhibit A -- Summary of Tasks and Hourly Rates

PROJECT NAME:		CEI Services for Broad Causeway over the Intercoastal - Contract Amendment 2.						
CLIENT:		Town of Bay Harbor Islands						
ADDRESS:								
DATE:		3/5/2024						
PROJECT LOCATION:		Bay Harbor Island, Miami Dade County, Florida						
TASK	PRINCIPAL	SENIOR PROJECT ENGINEER	PROJECT ENGINEER	SENIOR ROADWAY INSPECTOR	ROADWAY INSPECTOR	ADMIN. ASSISTANT / CLERICAL		SUBTOTAL
LOADED HOURLY RATE	\$0.00	\$255.23	\$146.43	\$96.25	\$67.49	\$0.00	\$0.00	
DESIGN								
PHASE I - PRELIMINARY AND SCHEMATIC DESIGN / DATA COLLECTION								
Prep Survey Scope								\$0.00
Review survey for sufficiency								\$0.00
Prep Design Concept								\$0.00
Prep Project Timetable								\$0.00
Meet with County Public Works Department								\$0.00
Meet with City of Miami								\$0.00
Prep Statement of Probable Construction Cost								\$0.00
Utility Request								\$0.00
Phase I Subtotal								\$0.00
PHASE II - DESIGN DEVELOPMENT								
Prep Key Sheet								\$0.00
Prep General notes								\$0.00
Prep Site Aerial								\$0.00
Prep Site plan								\$0.00
Prep Demolition Plan								\$0.00
Prep New Construction Plan								\$0.00
Prep Grading Plan								\$0.00
Prep Erosion and Sedimentation Control Plan								\$0.00
Prep General Details								\$0.00
Prep Structural Calculations								\$0.00
Prep Structural Plan and Notes								\$0.00
Electrical Plans								\$0.00
Update Statement of Probable Construction Cost								\$0.00
Coordinate with MEP								\$0.00
QC Plans								\$0.00
Meet with City of Miami								\$0.00
Phase II Subtotal								\$0.00
PHASE III - FINAL DESIGN / CONSTRUCTION DOCUMENTS								
Make Revisions to Plans								\$0.00
Coordinate w MEP								\$0.00
Meet with City of Miami								\$0.00
Update Statement of Probable Construction Cost								\$0.00
QC Plans								\$0.00
Bid Form								\$0.00
Specifications								\$0.00
PERMITTING								
Miami-Dade PW Dept								\$0.00
DERM								\$0.00
MDWASD								\$0.00
City of Miami								\$0.00
Fire Dept								\$0.00
Health Dept								\$0.00
Phase III Subtotal								\$0.00
TOTAL DESIGN PHASE								\$0.00
POST DESIGN								

PHASE IV - BIDDING AND NEGOTIATION PHASE								
Respond to questions related to design								\$0.00
Addenda to clarify, correct or change bid docs								\$0.00
Qualification Criteria								\$0.00
Phase IV Subtotal	0	0	0	0	0			\$0.00
PHASE V - ADMINISTRATION OF CONSTRUCTION CONTRACT								
Pre-construction Preparation and Meeting								\$0.00
Inspections				830				\$79,887.50
Inspection Report								\$0.00
Progress Meetings								\$0.00
Payment Certificate								\$0.00
Shop Drawing Review								\$0.00
Address RFI's								\$0.00
Change Order review								\$0.00
Preliminary Punch List								\$0.00
Final Punch List								\$0.00
Construction Oversight				82				\$12,007.26
Phase V Subtotal	0	0	82	830	0			\$91,894.76
PHASE VI - POST CONSTRUCTION ADMINISTRATION								
Written Manual								\$0.00
Record Drawings								\$0.00
Inspection before warranty expiration								\$0.00
Close-out Documents				4	40			\$4,435.72
Phase VI Subtotal	0	0	4	40	0			\$4,435.72
TOTAL POST DESIGN PHASE	0	0	86	870	0	0	0	\$96,330.48
ALLOWANCE								
Reimbursables								
Survey								
Permit Fees								
Allowance Subtotal	0	0	0	0	0			\$0.00
TOTAL	0	0	86	870	0	0	0	\$96,330.48

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 6.

ITEM: Consideration and Approval of a resolution approving the renewal of a Mutual Aid Agreement and Joint Declaration between the Village of Indian Creek and the Town of Bay Harbor Islands for shared law enforcement services. Enclosed are the agreements and proposed resolution.

DESCRIPTION:

The Mutual Aid Agreement provides for rendering of assistance for routine and law enforcement intensive situations between both agencies. This Mutual Aid Agreement combines the elements of a Voluntary Cooperation Agreement and a requested Operational Assistance Agreement as described in Chapter 23 Florida Statutes. Both the MOU and Joint Declaration are attached.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

There is no fiscal impact for entering into these agreements.

BUDGET IMPACT:

Submitted By: Analily Perez, Administrative Coordinator

ATTACHMENTS

1.	Resolution - Village of Indian Creek Mutual Aid Agreement
2.	Village of Indian Creek

RESOLUTION NO. _____

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF
BAY HARBOR ISLANDS, FLORIDA APPROVING THE
MUTUAL AID AGREEMENT AND JOINT DECLARATION
BETWEEN THE TOWN OF BAY HARBOR ISLANDS AND
THE VILLAGE OF INDIAN CREEK FOR LAW
ENFORCEMENT SERVICES; PROVIDING FOR
INCORPORATION OF RECITALS; AND SETTING AN
EFFECTIVE DATE.**

WHEREAS, it is the responsibility of the governments of the Town of Bay Harbor Islands, Florida and the Village of Indian Creek, Florida, to ensure the public safety of their respective citizens by providing adequate levels of police services to address any foreseeable routine or emergency situations; and

WHEREAS, because of the existing and continuing possibility of the occurrence of law enforcement problems and other natural and man-made conditions which are, or likely to be, beyond the control of the services, personnel, equipment, or facilities of the Town of Bay Harbor Islands' Police Department or the Village of Indian Creek's Police Department; and

WHEREAS, in order to ensure that preparation of these law enforcement agencies will be adequate to address any and all of these conditions, to protect the public peace and safety, and to preserve the lives and property of the people of the Town of Bay Harbor Islands, Florida and the Village of Indian Creek; and

WHEREAS, it is to the advantage of each law enforcement agency to receive and extend mutual aid in the form of law enforcement services and resources to adequately respond to:

- (1) Continuing, multi-jurisdiction law enforcement problems, so as to protect the public peace and safety, and preserve the lives and property of the people; and

(2) Intensive situations including, but not limited to, emergencies as defined under Section 252.34 of the Florida Statutes, or requests for certain law enforcement services specified herein as defined under Section 23.1225 of the Florida Statutes; and

WHEREAS, the Town of Bay Harbor Islands and the Village of Indian Creek have the voluntary cooperation and assistance authority under the Florida Mutual Aid Act, Section 23.12-23.127 of the Florida Statutes, to enter into this Voluntary Cooperation and Operational Assistance Mutual Aid Agreement (“Cooperation Agreement”) for law enforcement services which:

- (1) Permits voluntary cooperation and operational assistance of a routine law enforcement nature across jurisdictional lines as allowed under Section 23.1225, of the Florida Statutes; and
- (2) Provides for the rendering of assistance in law enforcement emergencies as defined in Section 252.34 of the Florida Statutes.

WHEREAS, the Town of Bay Harbor Islands and the Village of Indian Creek are desirous of entering into a Mutual Aid Agreement and Joint Declaration (“Exhibit 1”) with each other to provide adequate levels of police service to ensure the public safety of their residents.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS:

Section 1. Recitals: Recitals. The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

Section 2. Approval. The Town Council hereby approves the voluntary cooperation and operational assistance mutual aid agreement between the Town of Bay Harbor Islands and the Village of Indian Creek.

Section 3. Authority of Town Manager. The Town Manager is authorized to execute this Mutual Aid Agreement.

Section 4. Effective Date. This Resolution shall be effective upon adoption.

PASSED and ADOPTED this 20th day of March 2024.

ELIZABETH TRICOCHE, MAYOR

ATTEST:

YVONNE P. HAMILTON, TOWN CLERK

APPROVED AS TO FORM:

GREENSPOON MARDER LLP
TOWN ATTORNEYS
BY: Joseph S. Geller, Esq.

MUTUAL AID AGREEMENT

BETWEEN THE VILLAGE OF INDIAN CREEK PUBLIC SAFETY AND THE TOWN OF BAY HARBOR ISLANDS

WITNESSETH

WHEREAS, it is the responsibility of the governments of the Village of Indian Creek , Florida, and the Town of Bay Harbor Islands, Florida (collectively, the "Parties") to ensure the public safety of their citizens by providing adequate levels of police service to assess any foreseeable routine or emergency situation; and

WHEREAS, there is an existing and continuing possibility of the occurrence of law enforcement problems and other natural man-made conditions which are, or likely to be, beyond the control of the services, personnel, equipment, or facilities of the Village of Indian Creek Public Safety Department and the Town of Bay Harbor Islands Police Department (collectively, the "Agencies"); and

WHEREAS, the Parties are so located in relation to each other that it is to the advantage of each to receive and extend mutual aid in the form of law enforcement services and resources to adequately respond to:

- (1) Intensive situations including, but not limited to emergencies as defined under Section 252.34(3), Florida Statutes; and
- (2) Continuing, multi-jurisdictional law enforcement problems, so as to protect the public peace and safety, and preserve the lives and property of the people; and

WHEREAS, the Parties have authority under Part I of Chapter 23, Florida Statutes, the Florida Mutual Aid Act, to enter into:

- (1) A requested operational assistance agreement for the requesting and rendering of assistance in law enforcement intensive situations and emergencies; and
- (2) A voluntary cooperation agreement for assistance of a routine law enforcement nature that crosses jurisdictional lines.

NOW, THEREFORE, BE IT KNOWN that the Village of Indian Creek, a political subdivision of the State of Florida and the Town of Bay Harbor Islands, a political subdivision of the State of Florida, in consideration for mutual promises to render valuable aid in times of necessity, do hereby agree to fully and faithfully abide by and be bound by the following terms and conditions:

SECTION I: DESCRIPTION

This Agreement provides for the requesting and rendering of assistance for both routine and law enforcement intensive situations and combines elements of both a voluntary cooperation agreement and a requested operational assistance agreement, as described in Chapter 23, Florida Statutes.

SECTION II: PROVISIONS FOR VOLUNTARY COOPERATION

The Chief of Police for the Village of Indian Creek and the Chief of Police for the Town of Bay Harbor Islands (collectively "Agency Heads") may execute a joint declaration, enumerating the specific conditions under which aid may be requested or rendered pursuant to this Agreement (the "Joint Declaration"). Subsequent to execution, a Joint Declaration shall be filed with the clerks of the respective political subdivisions and shall thereafter become part of this Agreement. The Joint Declaration may be amended at any time upon the mutual assent of the Agency Heads.

SECTION III: POLICY AND PROCEDURE

- (a) In the event that a party to this Agreement is in need of assistance as set forth above, an authorized representative of the Agency requiring assistance shall notify the Agency, Agency Head, or his/her designee from whom such assistance is required. The Agency Head or authorized agency representative whose assistance is sought shall evaluate the situation and the Agency's available resources, consult with his/her supervisors if necessary and will respond in a manner he/she deems appropriate. The Agency Head's decision in this regard shall be final.
- (b) The resources or facilities that are assigned by the assisting Agency shall be under the immediate command of a supervising officer designated by the assisting Agency Head. Such supervising officer shall be under the direct supervision and command of the Agency Head or his designee of the Agency requesting assistance.
- (c) Should a violation of Florida Statutes occur in the presence of said officers representing their respective Agencies in the furtherance of this agreement, they shall be empowered to render enforcement assistance and act in accordance with law.

SECTION IV: POWERS, PRIVILEGES, IMMUNITIES AND COSTS

- (a) Members of the Agencies when actually engaging in mutual cooperation and assistance outside of the jurisdictional limits of the Village of Indian

Creek or Bay Harbor Islands under the terms of this Agreement, shall, pursuant to the provisions of Section 23.127, Florida Statutes, have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivision in which they are normally employed.

- (b) Each Party agrees to furnish the necessary equipment, resources, and facilities and to render services to each other Party to the Agreement as set forth above; provided however, that no Party shall be required to deplete unreasonably its own equipment, resources, facilities, and services in furnishing such mutual aid.
- (c) The Agency furnishing any equipment pursuant to this Agreement shall bear the loss or damages to such equipment and shall pay any expense incurred in the operation and maintenance thereof.
- (d) The Agency furnishing aid pursuant to this section shall compensate its appointees/employees during the time such aid is rendered and shall defray the actual travel maintenance expenses of such employees while they are rendering such aid, including any amounts paid or due for compensation due to personal injury or death while such employees are engaged in rendering such aid. However, if the requesting Agency receives compensation from the Federal Emergency Management Agency (FEMA), the requesting Agency may compensate the assisting Agency during the time of the rendering of such aid and may defray the actual travel and maintenance expenses of such employees while they are rendering such aid, including any amounts paid or due for compensation as a result of personal injury or death while such employees are rendering such aid as pertains to this Agreement.
- (e) All of the privileges and immunities from liability, exemption from laws, ordinances and rules, and all pension, insurance, relief, disability, worker's compensation, salary, death and other benefits which apply to the activity of such officers, agents or employee of any such agency when performing their respective functions within the territorial limits of their respective public agencies shall apply to them to the same degree, manner, and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this Agreement. The provisions of this section shall apply with equal effect to paid, volunteer, and reserve employees.
- (f) Nothing herein shall prevent the requesting Agency from requesting supplemental appropriations from the governing authority having

budgeting jurisdiction to reimburse the assisting Agency for any actual costs or expenses incurred by the assisting agency performing hereunder when assistance is requested under this Agreement.

SECTION V: FORFEITURE

It is recognized that during the course of the operation of the Agreement, property subject to forfeiture under the Florida Contraband Forfeiture Act, Florida Statutes, may be seized. Seized property shall be forfeited and equitably distributed among the participating agencies in proportion to the amount of investigation and participation performed by each agency. This shall occur pursuant to the provisions of the Florida Contraband Forfeiture Act.

SECTION VI: INDEMNIFICATION

Each Party engaging in any mutual cooperation and assistance, pursuant to this Agreement, agrees with respect to any suit or claim for damages resulting from any and all acts, omissions, or conduct of such party's own employees occurring while engaging in rendering such aid pursuant to this agreement, to hold harmless, defend and indemnify the other participating party and its appointees or employees, subject to provisions of Section 768.28, Florida Statutes, where applicable, and provided such party shall have control of the defense of any suit or claim to which said duty to indemnify applies.

SECTION VII: EFFECTIVE DATE

This agreement shall take effect upon execution and approval by the hereinafter-named officials and shall continue in full force and effect until the expiration of a period of five (5) years from the date hereof, unless terminated prior thereto by any or all of the Parties herein.

SECTION VII: CANCELLATION

This agreement may be cancelled by any Party upon delivery of written notice to the other Party or Parties. Cancellation will be at the direction of any subscribing Party.

IN WITNESS WHEREOF, the Parties hereto cause these presents to be signed on the date specified.

GUILLERMO OLMEDILLO
VILLAGE MANAGER
VILLAGE OF INDIAN CREEK

Date:_____

JOHN BERNARDO
CHIEF OF POLICE
VILLAGE OF INDIAN CREEK

Date:_____

ATTEST:

ROSEANN PRADO
VILLAGE CLERK
VILLAGE OF INDIAN CREEK

Date:_____

MARIA LASDAY
TOWN MANAGER
TOWN OF BAY HARBOR ISLANDS

Date:_____

LINDLSEY NOEL
CHIEF OF POLICE
BAY HARBOR ISLANDS

Date:_____

ATTEST:

YVONNE P. HAMILTON
TOWN CLERK
TOWN OF BAY HARBOR ISLANDS

Date:_____

**JOINT DECLARATION BETWEEN
VILLAGE OF INDIAN CREEK AND THE TOWN OF BAY HARBOR
ISLANDS PURSUANT TO A MUTUAL AID AGREEMENT**

A police officer of either of the participating law enforcement agencies shall be considered to be operating under the provisions of the mutual aid agreement when:

- Participating in law enforcement activities that are preplanned and approved by each respective agency head; or
- Appropriately dispatched in response to a request for assistance from the other law enforcement agency.

In compliance with and under the authority of the Mutual Aid Agreement heretofore entered into by the Village of Indian Creek, Florida and the Town of Bay Harbor Islands, Florida, it is hereby declared that the following list comprises the circumstances and conditions under which mutual aid may be requested and rendered regarding police operations pursuant to the agreement. Said list may be amended or supplemented from time to time as needs dictate by subsequent declarations.

1. Joint multi-jurisdictional criminal investigations.
2. Civil affray or disobedience, disturbances, riots, large protest demonstrations, controversial trials, political conventions, labor disputes, and strikes.
3. Any natural disaster.
4. Incidents which require rescue operations and crowd and traffic control measures including, but not limited to, large-scale evacuations, aircraft and shipping disasters, fires, explosions, gas line leaks, radiological incidents, train wrecks and derailments, chemical or hazardous waste spills, and electrical power failures.
5. Terrorist activities including, but not limited to, acts of sabotage.
6. Escapes from or disturbances within detention facilities.

7. Hostage and barricaded subject situations, and aircraft piracy.
8. Control of major crime scenes, area searches, perimeter control, back-ups to emergency and in-progress calls, pursuits, and missing person calls.
9. Enemy attack.
10. Transportation of evidence requiring security.
11. Major events, e.g., sporting events, concerts, parades, fairs, festivals and conventions.
12. Security and escort duties for dignitaries.
13. Emergency situations in which one agency cannot perform its functional objective.
14. Incidents requiring utilization of specialized units, e.g., underwater recovery, aircraft, canine, motorcycle, bomb, crime scene, marine patrol, and police information.
15. Joint training in areas of mutual need.
16. Joint multi-jurisdictional marine interdiction operations.

The following procedures will apply in mutual aid operations:

1. Mutual aid requested or rendered will be approved by the Chief of Police or designee.
2. Specific reporting instructions for personnel rendering mutual aid should be included in the request for mutual aid. In the absence of such instructions, personnel will report to the ranking on-duty supervisor on the scene.
3. Communications instructions will be included in each request for mutual aid.
4. Incidents requiring mass processing of arrestees, transporting prisoners, and operating temporary detention facilities will be handled per established procedures.

AGREED TO AND ACKNOWLEDGED this _____ day of _____, 2024

GUILLERMO OLMEDILLO
VILLAGE MANAGER
VILLAGE OF INDIAN
CREEK

Date:_____

ATTEST:

ROSEANN PRADO
VILLAGE CLERK
VILLAGE OF INDIAN
CREEK

Approved as to form
And legal sufficiency:

STEPHEN J. HELFMAN
VILLAGE ATTORNEY
VILLAGE OF INDIAN
CREEK

Date:_____

MARIA LASDAY
TOWN MANAGER
BAY HARBOR ISLANDS

Date:_____

ATTEST:

YVONNE P. HAMILTON
TOWN CLERK
TOWN OF BAY HARBOR ISLANDS

Approved as to form
And legal sufficiency:

JOSEPH S. GUELLER
TOWN ATTORNEY
TOWN OF BAY HARBOR ISLANDS

Date:_____

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 7.

ITEM: Consideration and Approval of a resolution renewing the Mutual Aid Agreement and Joint Declaration between the Town of Medley and the Town of Bay Harbor Islands for shared police services. Enclosed are the proposed agreement and resolution.

DESCRIPTION:

The Mutual Aid Agreement provides for rendering of assistance for routine and law enforcement intensive situations between both agencies. This Mutual Aid Agreement combines the elements of a Voluntary Cooperation Agreement and a requested Operational Assistance Agreement as described in Chapter 23 Florida Statutes. Both the MOU and Joint Declaration are attached.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

There is no fiscal impact for entering into these agreements.

BUDGET IMPACT:

Submitted By: Analily Perez, Administrative Coordinator
 Lindsley Noel

ATTACHMENTS

1.	Resolution - Town of Medley Mutual Aid Agreement
2.	Town of Medley Mutual Aid Agreement 2024

RESOLUTION NO. _____

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF
BAY HARBOR ISLANDS, FLORIDA APPROVING THE
MUTUAL AID AGREEMENT AND JOINT DECLARATION
BETWEEN THE TOWN OF BAY HARBOR ISLANDS AND
THE TOWN OF MEDLEY FOR LAW ENFORCEMENT
SERVICES; PROVIDING FOR INCORPORATION OF
RECITALS; AND SETTING AN EFFECTIVE DATE.**

WHEREAS, it is the responsibility of the governments of the Town of Bay Harbor Islands, Florida and the Town of Medley, Florida, to ensure the public safety of their respective citizens by providing adequate levels of police services to address any foreseeable routine or emergency situations; and

WHEREAS, because of the existing and continuing possibility of the occurrence of law enforcement problems and other natural and man-made conditions which are, or likely to be, beyond the control of the services, personnel, equipment, or facilities of the Town of Bay Harbor Islands' Police Department or the Town of Medley Police Department; and

WHEREAS, in order to ensure that preparation of these law enforcement agencies will be adequate to address any and all of these conditions, to protect the public peace and safety, and to preserve the lives and property of the people of the Town of Bay Harbor Islands, Florida and the Town of Medley; and

WHEREAS, it is to the advantage of each law enforcement agency to receive and extend mutual aid in the form of law enforcement services and resources to adequately respond to:

- (1) Continuing, multi-jurisdiction law enforcement problems, so as to protect the public peace and safety, and preserve the lives and property of the people; and

(2) Intensive situations including, but not limited to, emergencies as defined under Section 252.34 of the Florida Statutes, or requests for certain law enforcement services specified herein as defined under Section 23.1225 of the Florida Statutes; and

WHEREAS, the Town of Bay Harbor Islands and the Town of Medley have the voluntary cooperation and assistance authority under the Florida Mutual Aid Act, Section 23.12-23.127 of the Florida Statutes, to enter into this Voluntary Cooperation and Operational Assistance Mutual Aid Agreement (“Cooperation Agreement”) for law enforcement services which:

- (1) Permits voluntary cooperation and operational assistance of a routine law enforcement nature across jurisdictional lines as allowed under Section 23.1225, of the Florida Statutes; and
- (2) Provides for the rendering of assistance in law enforcement emergencies as defined in Section 252.34 of the Florida Statutes.

WHEREAS, the Town of Bay Harbor Islands and the Town of Medley are desirous of entering into a Mutual Aid Agreement and Joint Declaration (“Exhibit 1”) with each other to provide adequate levels of police service to ensure the public safety of their residents.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS:

Section 1. Recitals: Recitals. The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

Section 2. Approval. The Town Council hereby approves the voluntary cooperation and operational assistance mutual aid agreement between the Town of Bay Harbor Islands and the Town of Medley.

Section 3. Authority of Town Manager. The Town Manager is authorized to execute this Mutual Aid Agreement.

Section 4. Effective Date. This Resolution shall be effective upon adoption.

PASSED and ADOPTED this 20th day of March 2024.

ELIZABETH TRICOCHE, MAYOR

ATTEST:

YVONNE P. HAMILTON, TOWN CLERK

APPROVED AS TO FORM:

GREENSPOON MARDER LLP
TOWN ATTORNEYS
BY: Joseph S. Geller, Esq.

**COMBINED VOLUNTARY COOPERATION AND
OPERATIONAL ASSISTANCE
MUTUAL AID AGREEMENT
BETWEEN
THE TOWN OF MEDLEY, FLORIDA AND
THE TOWN OF BAY HARBOR ISLANDS, FLORIDA**

This Voluntary Cooperation and Operational Assistance Mutual Aid Agreement is made as of this ____ day of _____, 2024, by and between the TOWN OF MEDLEY, FLORIDA, a Florida municipal corporation, having its principal office at 7777 NW 72 Avenue, Medley, Florida 33166, and the TOWN OF BAY HARBOR ISLANDS, a Florida municipal corporation having its principal office at 9665 Bay Harbor Terrace, Bay Harbor Islands, Florida 33154, and states as follows:

WHEREAS, it is the responsibility of the governments of the Town of Medley, Florida, and the Town of Bay Harbor Islands, Florida, to ensure the public safety of their citizens by providing adequate levels of police services to address any foreseeable routine or emergency situation; and

WHEREAS, there is an existing and continuing possibility of the occurrence of law enforcement problems and other natural and man-made conditions which are, or are likely to be, beyond the control of the services, personnel, equipment, or facilities of the Town of Medley Police Department or the Town of Bay Harbor Islands Police Department; and

WHEREAS, the Town of Medley and the Town of Bay Harbor Islands are so located in relation to each other that it is in the best interest and advantage of each to receive and extend mutual aid in the form of law enforcement services and resources to adequately respond to:

- (1) Continuing, multi-jurisdictional criminal activity, so as to protect the public peace and safety, and preserve the lives and property of the people; and

- (2) Intensive situations including, but not limited to, natural or manmade disasters or emergencies as defined under Section 252.34, Florida Statutes; and
- (3) Joint provision of certain law enforcement services specified herein and allowed pursuant to Florida Statute 166.0495; and

WHEREAS, the Town of Medley and the Town of Bay Harbor Islands have the authority under The Mutual Aid Act, Chapter 23, Part I, Florida Statutes, to enter into a combined mutual aid agreement for law enforcement services which:

- (1) Permits voluntary cooperation and assistance of a routine law enforcement nature across jurisdictional lines; and
- (2) Provides for rendering of assistance in a law enforcement emergency.

NOW, THEREFORE, BE IT KNOWN, that the Town of Medley, a political subdivision of the State of Florida, and the Town of Bay Harbor Islands a political subdivision of the State of Florida, in consideration for mutual promises to render valuable aid in times of necessity, do hereby agree to fully and faithfully abide by and be bound by the following terms and conditions.

SECTION 1: PROVISIONS FOR VOLUNTARY COOPERATION

Each of the aforesaid law enforcement agencies hereby approve and enter into this agreement whereby each of the agencies may provide voluntary cooperation and assistance of a routine law enforcement nature across jurisdictional lines. The nature of the law enforcement assistance to be rendered shall include but not be limited to:

- a. Concurrent law enforcement jurisdiction in and throughout the territorial limits of the Town of Medley and the Town of Bay Harbor Islands for arrests, made pursuant to the laws of arrest, for felonies and misdemeanors, including arrestable traffic offenses, which spontaneously take place in the presence of the arresting officer, at such times as the arresting officer is traveling from place to place on official business outside of his or her jurisdiction, for

example, to or from court, or at any time when the officer is within the territorial limits of his or her jurisdiction.

- b. Concurrent law enforcement jurisdiction in and throughout the territorial limits of the Town of Medley and the Town of Bay Harbor Islands for arrests, made pursuant to the laws of arrest, of persons identified as a result of investigations of any offense constituting a felony or any act of Domestic Violence as defined in Section 741.28, Florida Statutes, when such offense occurred in the municipality employing the arresting officer.
- c. Concurrent law enforcement jurisdiction in and upon the jurisdictional waters of the Town of Medley and the Town of Bay Harbor Islands for arrests, made pursuant to the laws of arrest, for felonies and misdemeanors and boating infractions.
- d. Participating in exigent situations, without the need for a formal request, including, but not limited to, area searches for wanted subjects, perimeters, crimes in progress, escaped prisoners, traffic stops near municipal boundaries, requests for assistance when no available local units are nearby, calls indicating a crime or incident has occurred in which a citizen may likely be injured and the assisting municipality is closer to the area than the officer receiving the call.
- e. Concurrent law enforcement jurisdiction in and throughout the territorial limits of the Town of Medley and the Town of Bay Harbor Islands for investigations of homicides, sex offenses, robberies, assaults, batteries, burglaries, larcenies, gambling, motor vehicle thefts, drug violations pursuant to Chapter 893, Florida Statutes, and inter-agency task forces and/or joint investigations.

Prior to any officer taking enforcement action pursuant to paragraphs (a) through (e) above, the officer shall notify the jurisdiction in which the action will be taken, unless exigent circumstances prevent such prior notification, in which case notification shall be made as soon after the action as practicable. If the agency having normal jurisdiction responds to the scene the assisting agency's officer may turn the situation over to them and offer any assistance requested including, but not limited to, a follow-up written report documenting the event and the actions taken.

These provisions are not intended to grant general authority to conduct investigations, serve warrants and/or subpoenas or to respond without request to emergencies already being addressed by the agency of normal jurisdiction, but is intended to address critical, life-threatening or public safety situations, prevent bodily injury to citizens, or secure apprehension of criminals whom the law enforcement officer may encounter.

SECTION II: PROVISIONS FOR OPERATIONAL ASSISTANCE

The aforesaid law enforcement agencies hereby approve and enter into this agreement whereby each of the agencies may request and render law enforcement assistance to the other to include, but not necessarily be limited to dealing with, the following:

1. Joint multi-jurisdictional criminal investigations.
2. Civil affray or disobedience, disturbances, riots, large protest demonstrations and assemblies, controversial trials, political conventions, labor disputes, and strikes.
3. Any natural, technological or manmade disaster.
4. Incidents which require rescue operations and crowd and traffic control measures including, but not limited to, large-scale evacuations, aircraft and shipping disasters, fires, explosions, gas line leaks, radiological incidents, train wrecks and derailments, chemical or hazardous waste spills, and electrical power failures.
5. Terrorist activities including, but not limited to, acts of sabotage.
6. Escapes from, or disturbances within, prisoner processing facilities.
7. Hostage and barricaded subject situations, and aircraft piracy.
8. Control of major crime scenes, area searches, perimeter control, back-ups to emergency and in-progress calls, pursuits, and missing person calls.
9. Enemy attack.
10. Transportation of evidence requiring security.

11. Major events, e.g., sporting events, concerts, parades, fairs, festivals, and conventions.
12. Security and escort duties for dignitaries.
13. Incidents requiring utilization of specialized units; e.g., underwater recovery, marine patrol, aircraft, canine, motorcycle, bicycle, mounted, SWAT, bomb, crime scene and police information.
14. Emergency situations in which one agency cannot perform its functional objective.
15. Joint training in areas of mutual need.
16. Joint multi-jurisdictional marine interdiction operations.
17. Off-duty special events.
18. DUI Checkpoints.

SECTION III: PROCEDURE FOR REQUESTING OPERATIONAL ASSISTANCE

1. Mutual aid requested or rendered will be approved by the Chief of Police, or designee. The Chief of Police, or designee, of the agency whose assistance is sought shall evaluate the situation and the agency's available resources, consult with his/her supervisors, if necessary, and will respond in a manner he/she deems appropriate.
2. The Chief of Police in whose jurisdiction assistance is being rendered may determine who is authorized to lend assistance in his/her jurisdiction, for how long such assistance is authorized, and for what purpose such authority is granted. This authority may be granted either verbally or in writing as the particular situation dictates.
3. Specific reporting instructions for personnel rendering mutual aid will be included in the request for mutual aid. In the absence of such reporting instructions, personnel will report to the ranking on-duty supervisor on the scene.
4. Communications instructions should be included in each request for mutual aid and each agency's communications centers will maintain radio contact with each other until the mutual aid situation has ended.
5. Incidents requiring mass processing of arrestees, transporting prisoners, and operating temporary detention facilities will be handled per established procedures of the requesting agency or Chief of Police involved.

SECTION IV: COMMAND AND SUPERVISORY RESPONSIBILITY

a. COMMAND:

The personnel and equipment that are assigned by the assisting Chief of Police shall be under the immediate command of a supervising officer designated by the assisting Chief of Police. Such supervising officer shall be under the direct supervision and command of the Chief of Police or his/her designee of the agency requesting assistance.

b. CONFLICTS:

Whenever an officer is rendering assistance pursuant to this agreement, the officer shall abide by and be subject to the rules and regulations, personnel policies, general orders, and standard operating procedures of his/her own employer. If any such rule, regulation, personnel policy, general order or standing operating procedure is contradicted, contravened or otherwise in conflict with a direct order of a superior officer of the requesting agency, then such rule, regulation, policy, general order or procedure shall control and shall supersede the direct order.

c. HANDLING COMPLAINTS:

Whenever there is cause to believe that a complaint has arisen as a result of a cooperative effort as it may pertain to this agreement, the Chief of Police or his/her designee of the agency employing the officer who is the subject of the complaint shall be responsible for the investigation of the complaint. The Chief of Police or designee of the requesting agency should ascertain at a minimum:

1. The identity of the complainant;
2. An address where the complaining party can be contacted;
3. The specific allegation; and
4. The identity of the employees accused without regard as to agency affiliation.

If it is determined during the investigation of a complaint that the accused is an employee of the assisting agency, the above information, with all pertinent documentation gathered during the receipt and processing of the complaint, shall be forwarded without delay to the agency for administrative review. The requesting agency may conduct a review of the complaint to determine if any factual basis for the complaint exists and/or whether any of the employees of the requesting agency violated any of their agency's policies or procedures.

SECTION V: LIABILITY

Each party engaging in any mutual cooperation and assistance, pursuant to this agreement, agrees to assume responsibility for the acts, omissions or conduct of such party's own employees while engaged in rendering such aid pursuant to this agreement, subject to the provisions of Section 768.28, Florida Statutes, where applicable.

SECTION VI: POWERS, PRIVILEGES, IMMUNITIES AND COSTS

- a. Employees of the Town of Medley and the Town of Bay Harbor Islands when actually engaging in mutual cooperation and assistance outside of their normal jurisdictional limits but inside this State, under the terms of this agreement, shall, pursuant to the provisions of Section 23.127 (1), Fla. Stat. (as amended), have the same powers, duties, rights, privileges and immunities as if the employee was performing duties inside the employee's political subdivision in which normally employed.
- b. Each party agrees to furnish necessary personnel equipment, resources and facilities and to render services to each other party to this agreement as set forth above; provided, however, that no party shall be required to deplete unreasonably its own personnel, equipment, resources, facilities, and services in furnishing such mutual aid.
- c. The political subdivision that furnishes equipment pursuant to this agreement must bear the cost of loss or damage to that equipment and must pay any expense incurred in the operation and maintenance of that equipment.

- d. The political subdivision furnishing aid pursuant to this agreement shall compensate its employees during the time of the rendering of aid and shall defray (provide for the payment of) the actual travel and maintenance expenses of its employees while they are rendering aid, including any amounts paid or due for compensation for personal injury or death while its employees are rendering aid.
- e. The privileges and immunities from liability, exemption from laws, ordinances and rules, and pension, insurance, relief, disability, workers' compensation, salary, death, and other benefits that apply to the activity of an employee of an agency when performing the employee's duties within the territorial limits of the employee's agency apply to the employee to the same degree, manner, and extent while engaged in the performance of the employee's duties extraterritorially under the provisions of this mutual aid agreement. This section applies to paid, volunteer, reserve and auxiliary employees.
- f. Nothing herein shall prevent the requesting agency from requesting supplemental appropriations from the governing authority having budgeting jurisdiction to reimburse the assisting agency for any actual costs or expenses incurred by the assisting agency performing hereunder.

SECTION VII: FORFEITURES

It is recognized that during the course of the operation of this agreement, property subject to forfeiture under Sections 932.701- 932.707, Florida Statutes, known as the "Florida Contraband Forfeiture Act," may be seized. The property shall be seized, forfeited, and equitably distributed among the participating agencies in proportion to the amount of investigation and participation performed by each agency pursuant of the provisions of the "Florida Contraband Forfeiture Act."

SECTION VIII: INSURANCE

Each political subdivision shall provide, upon request, satisfactory proof of liability insurance by one or more of the means specified in Section 768.28, Florida Statutes, in an

amount which is, in the judgment of the governing body of that political subdivision, at least adequate to cover the risk to which that party may be exposed. Should the insurance coverage, however provided, of any party be canceled or undergo material change, that party shall notify all parties to this agreement of such change within ten (10) days of receipt of the notice or actual knowledge of such change.

SECTION IX: EFFECTIVE DATE

This agreement shall take effect upon execution and approval by the hereinafter named officials and shall continue in full force and effect until _____, 2028. Under no circumstances may this agreement be renewed, amended or extended except in writing.

SECTION X: CANCELLATION

Either party may cancel its participation in this agreement upon delivery of written notice to the other political subdivision.

IN WITNESS WHEREOF, the parties hereto cause to these presents to be signed on the date first written above.

AGREED AND ACKNOWLEDGED this ____ day of _____, 2024.

ROBERTO MARTELL
Town Mayor
Town of Medley, Florida
Date: _____

ATTEST:

VICTORIA MARTINEZ
Town Clerk
Town of Medley, Florida

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

MICHAEL A. PIZZI, JR., ESQ.
Town Attorney
Town of Medley, Florida

JEANETTE SAID-JINETE
Chief of Police
Town of Medley, Florida

ELIZABETH TRICOCHÉ
Town Mayor
Town of Bay Harbor Islands, Florida
Date: _____

ATTEST:

YVONNE P. HAMILTON
Town Clerk
Town of Bay Harbor Islands, Florida

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

JOSEPH GELLAR, ESQ.
Town Attorney
Town of Bay Harbor Islands, Florida

LINDSLEY NOEL
Chief of Police
Town of Bay Harbor Islands, Florida

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 8.

ITEM: Consideration and Approval of a resolution for Budget Amendment No. 2 re-appropriating various funds carried forward from FY 2022-2023 to FY 2023-2024 to fund the cost of the projects that commenced during FY 2022-2023, and were not completed or were deferred until after September 30, 2023. Enclosed are the proposed resolution and supporting documents.

DESCRIPTION:

Below are the various funds to be carryforward from FY 2022-2023 to FY 2023-2024 to fund the cost of the projects that started during FY 2022-2023, but were not completed or were deferred until after September 30, 2023:

General Fund Balance – Unrestricted will be re-appropriated by \$861,733.64 for the projects budgeted and appropriated in Fiscal Year 2022/2023. \$740,475.23 of these funds will be transferred to the Capital Projects Fund. In FY 2022-23 Capital Projects were moved to a separate Fund.

Capital Projects Fund – Unrestricted will be re-appropriated by \$32,958.72 for the projects budgeted and appropriated in Fiscal Year 2022/2023 for procurement of Police Department equipment.

Capital Projects Fund – Unrestricted will be re-appropriated by \$740,475.23 for the projects budgeted and appropriated in Fiscal Year 2022/2023 for Temporary Town Hall. The installation of the electrical infrastructure for the modular structure approved by council in August 2023, is included in the carryforward.

Causeway Fund Balance – Unrestricted will be re-appropriated by \$618,393.01 for the projects budgeted and appropriated in Fiscal Year 2022/2023.

Sewer Fund Balance – Unrestricted will be re-appropriated by \$112,017.90 for the projects budgeted and appropriated in Fiscal Year 2022/2023.

RECOMMENDED ACTION:

Approve

FINANCIAL ANALYSIS:

Various Funds-Unrestricted Fund Balances are re-appropriated for the projects started in FY 2022-2023. (Exhibit A)

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	FY 2023 Funds Carryforwards Memo
2.	FY 2023 Budget Carryforwards Worksheet Attachment A



TOWN OF BAY HARBOR ISLANDS MEMORANDUM

DATE: MARCH 20TH, 2024
TO: HONORABLE MAYOR, VICE-MAYOR, AND MEMBERS OF THE TOWN COMMISSION
FROM: MARIA LASDAY, TOWN MANAGER
RE: FY 2022/2023 BUDGET CARRYFORWARDS

It is recommended that the Council approve the following re-appropriation carryforwards representing as listed below:

General Fund Balance – Unrestricted will be re-appropriated by \$861,733.64 for the projects budgeted and appropriated in Fiscal Year 2022/2023. \$740,475.23 of these funds will be transferred to the Capital Projects Fund. In FY 2022-23 Capital Projects were moved to a separate Fund.

Capital Projects Fund – Unrestricted will be re-appropriated by \$32,958.72 for the projects budgeted and appropriated in Fiscal Year 2022/2023 for procurement of Police Department equipment.

Capital Projects Fund – Unrestricted will be re-appropriated by \$740,475.23 for the projects budgeted and appropriated in Fiscal Year 2022/2023 for Temporary Town Hall. The installation of the electrical infrastructure for the modular structure approved by council in August 2023, is included in the carryforward.

Causeway Fund Balance – Unrestricted will be re-appropriated by \$618,393.01 for the projects budgeted and appropriated in Fiscal Year 2022/2023.

Sewer Fund Balance – Unrestricted will be re-appropriated by \$112,017.90 for the projects budgeted and appropriated in Fiscal Year 2022/2023.

Detailed information for these projects funded in 2022/2023 but not completed or deferred until after September 30, 2023, please refer to Attachment A. The sum to be carried forward is the total previously approved amount less any amounts expended prior to September 30, 2023. Various Funds projects may be substantially completed at this time but were still in process as of September 30th, 2023. Since final payments will be made in the 2023-2024 fiscal year, the funding needs to be brought forward.

Town of Bay Harbor Islands, Florida
Carryforwards Amendments to the 2023-2024 Budget
Attachment A

Fiscal Year 2023/2024

Budget Amendm. No. 2

Fund Nos. **001 General Fund**
 301 Capital Projects Fund
 401 Causeway Fund
 402 Sewer Fund

Account Number	Account Description	Justification	Original/Adjusted Budget	Increase	Decrease	Adjusted Budget
GENERAL FUND						
REVENUES						
001.9990.382010.000	Appropriation From Fund Balance	To Re-Appropriate Fund Balance for Expenditures below	\$ -	\$ 861,733.64	\$ -	861,733.64
TOTAL	GENERAL FUND REVENUES			\$ 861,733.64		
EXPENDITURES						
001.5125.400031.000	Professional Services-Town Clerk-Scanning	Re-appropriate Fund Balance for Carryforwards in General Fund. Amounts were originally funded in FY 2022/2023.	15,000.00	20,111.98	-	35,111.98
001.5240.400066.000	Computer Software-Building-Central Square			101,146.43	-	101,146.43
001.9990.400091.000	Transfer to other Funds (Temp Town Hall -Trailers)		2,136,000.00	740,475.23	-	2,876,475.23
TOTAL	GENERAL FUND EXPENDITURES			\$ 861,733.64		
CAPITAL PROJECTS FUND						
REVENUES						
301.9990.382010.000	Appropriation From Fund Balance	To Re-Appropriate Fund Balance for Expenditures below	\$ -	\$ 32,958.72	\$ -	32,958.72
301.9990.381000.000	Transfer From Other Funds		\$ 2,136,000.00	\$ 740,475.23	\$ -	2,876,475.23
TOTAL	CAPITAL PROJECTS FUND REVENUES			\$ 773,433.95		
EXPENDITURES						
301.5190.400062.000	Buildings-Temporary Town Hall (Trailers)	Re-appropriate Fund Balance for Carryforwards in Capital Projects Fund for Temporary Town Hall (Trailers) and Police Department Equipment. Amounts were originally funded in FY 2022/2023.	200,000.00	740,475.23	-	940,475.23
301.5210.400064.000	Machinery & Equipment-PD-Guns (Lou's Police Distributors)		-	32,958.72	-	32,958.72
TOTAL	CAPITAL PROJECTS FUND EXPENDITURES			\$ 773,433.95		

C A U S E W A Y F U N D

REVENUES						
402.0000.272000.000	Retained Earnings-Unreserved	Re-Appropriate Fund Balance	\$ -	\$ 618,393.01	\$ -	618,393.01
TOTAL	CAUSEWAY FUND REVENUES			\$ 618,393.01		
EXPENDITURES						
401.5415.400063.000	Improvements(Excl. Buildings)-Causeway-Bridge & Saddle Repair Bridge Proj BC-159 PO#05911 (BCC Engineering)	Re-appropriate Fund Balance for Carryforwards in Causeway Fund. Amounts were originally funded in FY 2022/2023.	-	19,584.00	-	19,584.00
401.5415.400063.000	Improvements(Excl. Buildings)-Causeway-96th Street Alleyway Conversion Proj#BHI-223 PO#05884 (Chen Moore & Associates)		-	26,903.29	-	26,903.29
401.5145.400063.000	Improvements(Excl. Buildings)-Causeway-Design and Bidding Support for the West Relief PO#06009 (BCC Engineering)		-	154,600.00	-	154,600.00
401.5145.400063.000	Improvements(Excl. Buildings)-Causeway-Design & Permitting Services for Seawall Replace PO#05995 (Chen Moore & Associates)		-	31,238.25	-	31,238.25
401.5145.400063.000	Improvements(Excl. Buildings)-Causeway-Broad Causeway Drawbridge PO#06019 (Atkins North		-	386,067.47	-	386,067.47
			-		-	
TOTAL	CAUSEWAY FUND EXPENDITURES			\$ 618,393.01		

S E W E R F U N D

REVENUES						
402.0000.272000.000	Retained Earnings-Unreserved	Re-Appropriate Fund Balance	\$ -	\$ 112,017.90	\$ -	112,017.90
TOTAL	SEWER FUND REVENUES			\$ 112,017.90		
EXPENDITURES						
402.5350.400031.000	Professional Services-Desing Services Sewer Upgrade Kimley Horn	Re-appropriate Fund Balance for Carryforwards in Sewer Fund. Amounts were originally funded in FY 2022/2023	-	93,017.90	-	93,017.90
402.5350.400063.000	Improvements(Excl. Buildings)-Sewer-Emergency Sewer Lining PO#06222 -LMK Pipe Renewal		-	19,000.00		
TOTAL	SEWER FUND EXPENDITURES			\$ 112,017.90		

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 9.

ITEM: Consideration and Approval of a resolution **Ratifying and Approving** emergency service authorization to Transcore in accordance with Section 2-1.3 of the Town's Emergency Procurements provisions, for the replacement of firewalls for Sunpass servers at Town Hall for an approximate amount of \$31,950.87. Enclosed is a copy of the price quote.

DESCRIPTION:

The Transcore firewalls connected to the Sunpass system are almost ten years old and have been experiencing intermittent outages and problems recently. TransCore has advised staff that this replacement is a high priority, so revenue will not be impacted in the event of hardware failure. Their recommendation is that the town upgrade this hardware immediately to avoid a total stoppage of the SunPass transactions.

Transcore is the sole provider for the town, so there is no need for an RFP process to get this equipment replaced. Section 2-1.2(8) of the Town Code provides an exemption from competitive bidding when contracting for procurements which are only available through sole source.

RECOMMENDED ACTION:

Approve

FINANCIAL ANALYSIS:

Three Hundred and Twenty-Five Thousand Dollars (325,000) has been allocated in the Fiscal Year 2023-2024 budget within the Causeway Fund in Account No. 401.5415.400063.000 for the replacement & moving of Causeway Servers from Town Building to Sunpass Gantry, The amount of \$31,950.87 is being requested for the toll system Firewall replacement, under the scope of services described above.

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	BHI - Infinity Firewall Replacement
2.	Resolution-SunPass Firewalls



3901 Commerce Parkway
Miramar, FL 33025
Phone: (954) 342-0690

February 27, 2024

Ms. Maria Lasday
Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Re: Toll System Firewall replacement

Dear Ms. Lasday,

As requested, please see the attached quote for the replacement of the firewall for the Infinity toll system.

FIREWALL	DESCRIPTION	PRICE
<i>Hardware</i>	<i>FIREWALL 2x Palo Alto PA-460 Firewall w/3 YR extended service</i>	\$ 25,231.18
<i>Markup</i>	<i>Standard 15% markup for non-contract hardware</i>	\$ 3,784.67
LABOR		
<i>Labor</i>	<i>Firewall configuration, post installation functionality verification</i>	\$ 2,935.02
TOTAL		\$ 31,950.87

Please do not hesitate to contact me at (321) 281-4153 if you have any questions.

Sincerely,
TRANSCORE

Edgardo Torres, PE, PMP
Associate Vice President

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA,
RATIFYING THE TOWN MANAGER'S APPROVAL OF
AN EMERGENCY PROCURMENT WITH TRANSORE
FOR REPLACEMENT OF THE FIREWALLS FOR THE
SUNPASS SERVERS; PROVIDING FOR
INCORPORATION OF RECITALS; AND PROVIDING
FOR AN EFFECTIVE DATE.**

WHEREAS, firewalls exist to provide basic protection against outside cyber threats by shielding the Town's computer network from malicious or unnecessary web traffic. In our case, the town utilizes Transcore firewall products; and

WHEREAS, the Transcore firewalls connected to the Sunpass system are almost 10 years old and have been experiencing intermittent outages and problems. Transcore has recommended the Town upgrade this hardware immediately to avoid a total stoppage of the Sunpass transactions; and

WHEREAS, the Town has an existing toll system maintenance agreement with Transcore; and

WHEREAS, Section 2-1.3 of the Town Code authorizes expenditures to be made and procurement contracts to be entered for emergencies without the need for complying with formal competitive sealed bidding procedures otherwise required by the Town Code.

WHEREAS, in order to address the emergency, the Town Manager approved a proposal from TransCore in the amount of \$31, 950.87 for replacement of the firewall for the Infinity Toll System.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF BAY
HARBOR ISLANDS, FLORIDA:**

Section 1. The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2. The Town Council hereby ratifies the Town Manager's approval of the proposal from TransCore in the amount of \$31,987.50 for replacement of the firewall for the Infinity Toll System.

Section 3. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

PASSED and ADOPTED this 20th day of March 2024.

By: _____
Elizabeth Tricoche - Mayor

ATTEST:

Yvonne P. Hamilton
Town Clerk

**APPROVED AS TO FORM AND LEGAL
SUFFIENCY:**

Greenspoon Marder LLP – Town Attorneys
By: Joseph S. Geller

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 10.

ITEM: Consideration and Approval of an ordinance on Second Reading amending Section 5 3/4-16 of the Town Code of Ordinances to change the name of the Litigation Committee to Mitigation Committee.

Sponsored by Council Member Robert Yaffe.

DESCRIPTION:

The proposed amendment to the Town Code seeks to change the Litigation Committee to Mitigation Committee to more accurately represent the function of the committee in mitigating fines imposed by the Special Magistrate.

PREVIOUS MEETING VOTE:

Mayor Elizabeth Tricoche - Yes

Vice Mayor Joshua Fuller - Yes

Council Member Stephanie Bruder - Yes

Council Member Teri D'Amico - Yes

Council Member Molly Diallo - Yes

Council Member Isaac Salver - Yes

Council Member Robert Yaffe - Yes

RECOMMENDED ACTION:

Council's Discretion

FINANCIAL ANALYSIS:

There is no fiscal impact.

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Ordinance - Litigation Committee change to Mitigation Committee
----	---

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING SECTION 5 ¾-16 OF THE TOWN CODE RENAMING THE LITIGATION COMMITTEE TO THE “MITIGATION COMMITTEE”; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 2.11 of the Town Charter authorizes the Town Council to create Boards and Committees; and

WHEREAS, Section 5 ¾-16 of the Town Code of Ordinances established the Litigation Committee with the authority to settle or otherwise resolve violations of the Town Code and the penalties arising thereunder; and

WHEREAS, the Town Council desires to change the name of the Litigation Committee to the Mitigation Committee to more accurately represent the matters that the committee considers in mitigating fines imposed by the Special Magistrate; and

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby ratified as true and correct and incorporated herein by reference.

Section 2. Town Code Amended. That Section 5 ¾ - 16 of the Code of Ordinances of the Town of Bay Harbor Islands is hereby amended to rename the Litigation Committee to the Mitigation Committee. New Language is indicated by underlining and deleted language by ~~striethrough~~.

Sec. 5 3/4-16. ~~Litigation Committee.~~ Mitigation Committee

The Town shall have a ~~Litigation Committee~~ Mitigation Committee, consisting of three Town Council members, to be appointed by a majority vote of the Town Council from time to time. Notwithstanding any of the foregoing sections of this chapter, the Town's ~~Litigation Committee~~ and Mitigation Committee shall have the authority at all times to settle or otherwise resolve violations of the Town Code and the penalties arising thereunder. However, if the Town's ~~Litigation Committee~~ Mitigation Committee votes that a penalty or fine be mitigated in an amount greater than \$75,000.00, then such mitigation shall not be final, but shall be submitted to the full Town Council for ratification and approval.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and be made a part of the Code of Bay Harbor Islands, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word “ordinance” may be changed to “section,” “article,” or other appropriate word.

Section 5. Repeal of Ordinances in Conflict

All ordinances or parts of ordinances in conflict herewith or inconsistent herewith, are hereby repealed, but only insofar as such ordinances may be inconsistent or in conflict with this Ordinance.

Section 6. Effective Date. This Ordinance shall be effective immediately upon its adoption on second reading.

PASSED on First Reading this 21st day of February 2024.

PASSED AND ADOPTED on Second Reading this ____ day of ____ 2024.

ELIZABETH TRICOCHE
MAYOR

ATTEST:

YVONNE P. HAMILTON, CMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

GREENSPOON MARDER, LLP
TOWN ATTORNEYS
BY: JOSEPH S. GELLER, ESQ.

AGENDA ITEM REPORT

March 20, 2024

ITEM NUMBER: 11.

ITEM: Consideration and Approval of an ordinance on Second Reading amending Sections 5-20 and 5-23 of the Town Code regarding the contents of preliminary site development plans. Sponsored by Council Member Teri D'Amico. Enclosed is a copy of the proposed ordinance.

DESCRIPTION:

The ordinance seeks to amend Sections 5-20 and 5-23 of the Town Code by increasing the requirements for submitting preliminary plans in connection with site plan approvals, in regards to several different categories.

PREVIOUS MEETING VOTE:

Mayor Elizabeth Tricoche - Yes
Vice Mayor Joshua Fuller - Yes
Council Member Stephanie Bruder - Yes
Council Member Teri D'Amico - Yes
Council Member Molly Diallo - Yes
Council Member Isaac Salver - Yes
Council Member Robert Yaffe - Yes

RECOMMENDED ACTION:

Council's Discretion

FINANCIAL ANALYSIS:

There is no fiscal impact to prepare the ordinance.

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	MMPA BHI Site Plan Checklist
2.	BHI Ordinance Teri D'Amico site plan with Ex A(56852470.1)
3.	BHI Draft Ord Text Town Site Plan Req Jan 2 2024 (002) (1)Language
4.	BHI DRC Site Plan Application Checklist

**TOWN OF BAY HARBOR ISLANDS
SITE PLAN SUBMISSION REQUIREMENTS**

In addition to the documentation contained in the Town's Code of Ordinances, the following list of detailed documents and document formats are provided to assist applicants with preparing complete and accurate submittal packages.

- The applicant shall submit six (6) copies of the site plan, the overall size which shall be twenty-four inches by thirty-six inches (24" x 36"), drawn at a scale no smaller than one inch equals forty feet (1" = 40"), except when a smaller scale is approved by the Town Planner. Once an application package is deemed complete, the plans will be scheduled for staff (DRC) review and comment. Once the DRC approves the plans, the applicant shall make any necessary revisions and provide an additional fifteen (15) copies of the corrected site plan.
- The applicant shall submit two (2) copies of a current boundary survey (no more than 6 months old) indicating existing improvements and land topography. This survey shall be prepared in the same scale as the site plan.
- The applicant shall submit a tree survey. This survey shall be prepared in the same scale as the site plan. If no trees are present on the site, the surveyor shall provide a statement to that effect.
- All site plans must be prepared, signed and sealed by one or more of the following professionals:
 1. A landscape architect registered by the State of Florida.
 2. An architect registered by the State of Florida.
 3. A civil engineer registered by the State of Florida.
 4. A land surveyor registered by the State of Florida.
- All site plans shall show, at a minimum, the following information and any other information deemed necessary by the Town Planner.
 - The proposed title of the project and the name of the engineer, architect, surveyor or landscape architect, and the developer;
 - The north point, scale and date;
 - Existing Zoning District / Land Use Plan Designation of the subject property;
 - Proposed changes in zoning and/or land uses to the subject property, if any;
 - Adjacent land uses (existing) within 300 feet of the subject property;

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MUNICIPAL PLANNING & ZONING CONSULTANT**

- Legal description;
- Location sketch;
- Site boundaries clearly identified, dimensioned and tied to section corners;
- Existing features (trees, water, structures) including topography, roadways, parking and land use areas which are to remain;
- All existing right-of-way, dedications, easements and property lines, existing streets, buildings, watercourses, waterways or lakes, and other existing physical features in or adjoining the project;
- The location and dimension of proposed setback lines;
- The location and dimensions of proposed reservations for parks, playgrounds, open spaces, and other common areas, if applicable;
- The location, dimensions and character of construction of proposed curb cuts, driveway entrances and exits, loading areas (including the number of required and provided parking and loading spaces), outdoor lighting systems, outdoor sound systems, storm drainage and sanitary facilities;
- Location and dimensions of all proposed buildings, excavations, and structures to lot lines and to each other;
- Paving and drainage plans and calculations; proposed flow direction and amount of drainage flow;
- Typical trash and garbage disposal system, as well as recycling system, including typical enclosure details and the location of each (NOTE: All receptacles must be screened from view and placed to provide easy access by sanitation trucks;
- Landscape plan indicating proposed landscaping, buffer yard standards, and required / provided opacity levels, type of irrigation; "Florida Friendly" techniques; botanical and common names of materials. Indicate required and provided materials. Indicate all required and provided quantities and sizes of landscape materials. Include all wall, fence, and tree staking details. The landscaping plan should reflect all easements including utility, and all above ground utilities or drainage features, etc.
- General location, character, size, height and orientation of proposed signs;
- All pedestrian walkways and sidewalks;
- Building elevations including illustration of screening of roof mounted mechanical equipment;

**MICHAEL MILLER PLANNING ASSOCIATES, INC.
MUNICIPAL PLANNING & ZONING CONSULTANT**

- Site lighting plan / calculations for parking areas / buildings (see Section 20-100);
- Type and location of mail receptacles;
- Sanitary sewer, potable water and any reuse water plans, which shall indicate the locations and sizes of sanitary and storm sewers, water mains, culverts and other underground structures in or near the project;
- The following computations:
 1. Total site square footage/acreage;
 2. Allowed and proposed density (residential only);
 3. Vehicular use calculations (roadway, aisles, parking);
 4. Recreational open space (residential only);
 5. Square footage / acreage by land use type;
 6. Impervious / pervious area percentages;
 7. Parking spaces required/provided;
 8. Landscape open space calculations
- Indication of proposed building materials and colors (color renderings/boards and color chips from approved Town Color Palette).
- Perspective illustrations of the proposed new development with existing and/or proposed adjoining / nearby developments (street level photographs / low oblique photographs / aerial photographs) showing the new development superimposed onto the site.
- Impact Analysis Report (Commercial / MFR - Does Not Apply to Single-Family Homes)

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO BUILDING AND CONSTRUCTION ACTIVITIES; AMENDING CHAPTER 5 ENTITLED BUILDINGS AND CONSTRUCTION, ARTICLE I, SECTION 5-20. ENTITLED "CONTENTS OF PRELIMINARY PLAN, PENALTY FOR NONCOMPLIANCE", SEC. 5-21. ENTITLED "DEFINITION OF "FINAL WORKING PLANS"", SEC. 5-22. ENTITLED "PRELIMINARY PLAN APPROVAL PRIOR TO SUBMISSION OF FINAL WORKING PLANS", AND SEC. 5-23. ENTITLED "TIME FOR SUBMITTING FINAL WORKING PLANS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Bay Harbor Islands adopted the first Building and Construction Code for the community in 1961; and

WHEREAS, the Town Council periodically studies various land development trends and issues, and considers strategies and design guidelines to encourage the proper re-development of lands within the Town, and amends its Codes accordingly; and

WHEREAS, after studying of the existing Code provisions, the Town Council finds that a need exists to modify the existing Code provisions, and

WHEREAS, the Town Council held duly advertised public hearings to consider the proposed modifications to the Town's Building and Construction Code.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2: That the Town of Bay Harbor Islands Building and Construction Code is hereby amended to modify Article I, Section 5-20. Entitled “Contents of Preliminary Plan, Penalty for Noncompliance”, Sec. 5-21. Entitled “Definition of “Final Working Plans””, Sec. 5-22. Entitled “Preliminary Plan Approval Prior to Submission of Final Working Plans” and Sec. 5-23. Entitled “Time For Submitting Final Working Plans” to modify provisions related to site plan exemptions as more fully set forth in the attached Exhibit “A”, and by reference are made a part hereof.

Section 3: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 4: The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5: It is the intention of the Town Council that the provisions of this Ordinance shall become and be made a part of the Code of Bay Harbor Islands, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word “ordinance” may be changed to “section,” “article,” or other appropriate word.

Section 6: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this ____ day of _____, 2024.

PASSED on Second Reading this ____ day of _____, 2024.

ELIZABETH TRICOCHÉ
MAYOR

ATTEST:

YVONNE P. HAMILTON, CMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

GREENSPOON MARDER LLP
TOWN ATTORNEYS
BY: JOSEPH S. GELLER, ESQ.

EXHIBIT “A”

**The Town of Bay Harbor Islands, Florida Code of Ordinances
is hereby amended as follows:**

CHAPTER 5

BUILDINGS AND CONSTRUCTION

Sec. 5-20. - Contents of preliminary plan.

For the purposes of this article, preliminary plans for a building shall consist of the following:

- (a) An artist's or architect's colored drawings of all sides of the structure as completed.
- (b) A landscape architect's colored drawings of the landscaping on all sides.
- (c) An architect's drawing of the parking area showing the parking spaces and a plot / site plan including the proposed layout of buildings, driveway and parking areas, pedestrian walkways, amenities, setback areas and other improvements.
- (d) An architect's plans of representative floors of a multifamily building designating typical apartment layouts, or of the entire single-family unit. As to commercial buildings, representative floor plans with proposed leasable bays, common areas, elevators and stairs, and mechanical equipment areas must be provided.
- (e) A description and samples of all materials to be used.
- (f) An architect's official computation of the lot coverage of the proposed structure in conformance with town ordinances.
- (g) A series of colored aerial photographic representations (i.e., front/rear/sides) of the subject site with the proposed site improvements superimposed onto the subject site illustrating how the new proposed project relates to neighboring properties (scale/compatibility).
- (h) Color renderings. A series of colored graphic architectural representations (i.e., front/sides/rear) illustrating how the new proposed project relates to neighboring properties.
- (i) Submittal of an impact analysis report (IAR) demonstrating compliance with the adopted concurrency Level of Service (LOS) requirements listed in subsection [11-8.4](#) of the Town's Code of Ordinances. The applicant shall pay for cost of preparing the IAR and be responsible for the town's cost of reviewing and processing said report, including town staff and outside consultants deemed necessary by the town.

(j) Traffic impact analysis. As part of the impact analysis report (IAR) each application, unless specifically exempted, shall provide an estimate of the expected vehicular trips to be generated by the new development. The analysis shall include estimates for average daily trips, a.m. peak hour trips, and p.m. peak hour trips. If a previous land development project existed on the site, the analysis shall include a comparison of the trips generated by the previous development and new development noting the estimated increase or decrease in trips. If deemed necessary by the town manager for a major development project, based on the quantity of expected trip counts or expected neighborhood impacts, the town may require a full-scale traffic study, the contents of which shall comply with the minimum criteria on file with the town. Such full-scale traffic study shall be prepared by a consulting engineer retained by the town, at the applicant's full expense.

(k) Preliminary building elevations showing the front, rear and sides of all building(s) and structures.

(l) Cross sections through the building(s) at periodic locations depicting the proposed building exterior, floors, parking areas, roof area, and foundation.

m) Preliminary civil engineering plans and calculations, including potable water and sanitary sewer facilities (proposed meter & pipe connection locations and sizes), drainage & stormwater facilities (soil analysis / calculations / design), solid waste, and other infrastructure to serve the development. The site design must demonstrate compliance with current flood regulations contained in the Florida Building Code (FBC), by the Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), Miami-Dade Public Works Manual, and Chapter 7½ of the Bay Harbor Code. The submittal information must include at a minimum: a complete flood legend, proposed finished floor elevations for all enclosures and garage / parking areas, proposed elevations of mechanical equipment, FEMA flood zone(s), NFIP Flood Insurance Rate Map (FIRM) panel number, Base Flood Elevation (BFE), Design Flood Elevation (DFE), highest and lowest crown of road adjoining the site, and highest and lowest adjacent grades.

(n) In addition to the above requirements, the Town shall prepare, maintain, and make available an administrative site development plan application form and more detailed checklist of required additional requirements.

(o) Notwithstanding the above requirements, for minor revisions to existing or previously approved developments that do not substantially alter or affect a design, as determined by the Town Building Official or other designated staff, such as exterior façade & material alterations, accessory structures that require Design Review Board approval (arbors, cabanas, gazebos, pergolas, trellis, and similar), recreational court facilities, driveways and walkways, garage enclosures, patios & terraces, swimming pools & decking, and other items prior to the Town issuing building permits, the designated Town staff may alter or waive the above submittal requirements based on non-applicability and cost.

Sec. 5-21. - Definition of "final working plans."

For the purposes of this article, "final working plans" are those plans together with specifications which meet all requirements of the building code for the issuance of a building permit.

Sec. 5-22. - Preliminary plan approval prior to submission of final working plans.

Preliminary plans must be approved by the design review board prior to the submission of final working plans of any building.

Sec. 5-23. - Time for submitting final working plans.

Final working plans must be submitted to the town manager within 365 days of the approval of the preliminary plans. If not submitted within that time, the approval of the preliminary plans is automatically vacated. The town manager may extend the 365-day period for no more than 180 days. In addition, the submittal timeframes shall automatically be extended per the laws / orders of the State of Florida.



Town Council

Joshua D. Fuller
Mayor

Elizabeth Tricoche
Vice Mayor

Stephanie Bruder
Council Member

Molly Winters Diallo
Council Member

Isaac Salver
Council Member

Teri D'Amico
Council Member

Robert Yaffe
Council Member

Town Officials

Maria Lasday
Town Manager

Yvonne Hamilton
Town Clerk

Joseph S. Geller
Town Attorney

Attention: Developers, Contractor and/or Property Owners

For new development and renovation, compatibility to our existing community is the highest priority. In order to achieve this, we encourage you to research our unique islands' history and culture. We strongly encourage design creativity, and that buildings, graphics and structures represent quality design "of our time".

Due to small scale of the Town, adjacent structures will be greatly affected by its neighbor's design and massing. We encourage you to tour our Town. We hope the buildings inspire your design creativity and that your project will represent our rich, architectural heritage. The Committee is open to individual, compatible interpretations.

Since 1947, the East Island has matured with multi-family, garden style apartment buildings with a commercial strip along Kane Concourse. Mid-century/international style dominates the islands. The simple geometry allows for many contemporary, unlimited, compatible interpretations.

We are looking forward to your project being an enhancement to our community.

Sincerely,

Development Review Committee

MAYOR JOSEPH J. GARDNER GOVERNMENT CENTER

APPLICATION FOR SITE PLAN REVIEW



Legal description of real property in the Town of Bay Harbor Islands, Florida for which site plan approval is requested.

Folio # _____

Size of described property _____

Project Description _____ Units _____

Owner(s) Name _____

Mailing Address _____

City _____ State _____ Zip _____

Phone Number _____ Email _____

Signature of Owner _____

Name of Applicant (if different from owner) _____

Mailing Address _____

City _____ State _____ Zip _____

Phone Number _____ Email _____

Signature of Applicant _____

Name of Representative _____

Mailing Address _____

City _____ State _____ Zip _____

Phone Number _____ Email _____

~~~~~  
**TO BE COMPLETED BY TOWN OF BAY HARBOR ISLANDS**

Date Received \_\_\_\_\_ By \_\_\_\_\_

Process Number \_\_\_\_\_ Fee Paid \_\_\_\_\_

## Town Council

Joshua D. Fuller  
Mayor

Elizabeth Tricoche  
Vice Mayor

Stephanie Bruder  
Council Member

Molly Winters Diallo  
Council Member

Isaac Salver  
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Teri D'Amico  
Council Member

Robert Yaffe  
Council Member

## Town Officials

Maria Lasday  
Town Manager

Yvonne Hamilton  
Town Clerk

Joseph S. Geller  
Town Attorney





## **APPLICATION PROCEDURES FOR RESIDENTIAL DEVELOPMENT**

The following application information is required to be submitted to the Town Hall with the application prior to review. No project will be scheduled for a meeting before the Planning and Zoning Board unless all aspects of the plan are fully compliant with the Town's Zoning regulations.

1. Application Form - completed and signed.
2. Power of Attorney - required if applicant is not the developer of the property.
3. Certified Land Survey - showing property dimensions, lot, and block number and exiting physical improvements. If the project is on two or more lots, a unity of title is required.
4. Site Plan(s) - to include dimensions of all buildings, structures, setbacks, and parking. Dimensions for height must reference both NGVD and BFE. Identify the base flood elevation (BFE) per floor, the overall building height and roof mounted accessory structures.
5. Landscape Plan(s) - to include **all items required and specified by Miami-Dade County minimum landscape ordinance [Section 18A-4(B)(2)], and Town Code Section 24-16.** Town Code requires 20% minimum landscape.
6. Floor Plan(s) - typical floor plan layout for each floor. Identify the units, units size, type of rooms, common areas, open areas, amenities and required fire escape spaces.
7. Building Elevations - show front, rear and side elevations.
8. List of Uses - a complete list of uses with corresponding square footage calculations.
9. Calculations - detailed estimates of water and sewer demands, vehicular trips and number of parking spaces, unit sizes, drainage, etc.

10. Auxiliary Plans and Calculations - submit additional plans and calculations, as required by the Town Manager, for review of special features or design considerations.
11. Samples - submit color and material samples of the building and site design elements
12. Architect's or artist's colored rendering of all sides of the structure as completed.
13. A landscape architect's colored rendering (elevation view) of the landscaping on all sides.
14. Design Review Fee: Resolution #1140 passed and adopted October 8, 2012  
**Pre-DRC Review - \$350.00**  
**Initial Application - \$3,000** for RM-1, RM-2, RM-3 and B-1 Zoning only (no single family)  
**Revision (resubmittal) Review - \$350.00**
15. County Approval - Resolution of approval by the County Shoreline Review Committee, if waterfront property. The Shoreline Review Committee Resolution must be submitted prior to the issuance of building permits after Planning and Zoning Approval.
16. Information - additional information as deemed necessary by the Town for proper review.

\*All submittals must consist of ~ **One full size plans 24"x36", 5 sets of 11"x17" and all files in flash drive.**

\*\*After your project has been reviewed and approved by the Development Review Committee. You will then be placed on the agenda to go before Design Review Board.

**ALL RENDERINGS ARE TO BE DONE IN COLOR FOR ALL SUBMISSIONS.**



## **TOWN OF BAY HARBOR ISLANDS - SITE PLAN SUBMISSION REQUIREMENTS**

In addition to the documentation contained in the Town's Code of Ordinances, the following list of detailed documents formats are provided to assist applicants with preparing complete and accurate submittal packages.

- All site plans must be prepared, signed and sealed by one or more of the following professionals:
  1. A landscape architect registered by the State of Florida
  2. An architect registered by the State of Florida
  3. A civil engineer registered by the State of Florida
  4. A land surveyor registered by the State of Florida
- All site plans shall show, at a minimum, the following information and any other information deemed necessary by the Town Planner.
  1. The proposed title of the project and the name of the engineer, architect, surveyor or landscape architect and the developer
  2. Existing Zoning District / Land Use Plan Designation of the subject property
  3. Proposed changes in zoning and/or land uses to the subject property, if any
  4. Adjacent land uses (existing) within 300 feet of the subject property
  5. Legal description
  6. Location sketch
  7. Site boundaries clearly identified, dimensioned and tied to section corners
  8. Existing features (trees, water, structures) including topography, roadways, parking and land use areas which are to remain
  9. All existing right-of-way, dedications, easements and property lines, existing streets, buildings, watercourses, waterways or lakes, and other existing physical features in or adjoining the project
  10. The location and dimension of proposed setback lines
  11. The location and dimensions of proposed reservations for parks, playgrounds, open spaces, and other common areas, if applicable
  12. The location, dimensions and character of the construction of proposed curb cuts, driveway entrances and exists, loading areas (including the number of required and provided parking and loading spaces), outdoor lighting systems, outdoor sound systems, storm drainage and sanitary facilities
  13. Location and dimensions of all proposed buildings, excavations, and structures to lot lines and to each other
  14. Paving and drainage plans and calculations; proposed flow direction and amount of drainage flow

15. Typical trash and garbage disposal system, as well as recycling system, including typical enclosure detail and the location of each (NOTE: All receptacles must be screened from view and placed to provide easy access by sanitation trucks)

16. Landscape plan indicating proposed landscaping, buffer yard standard, and required . Provided opacity levels, type of irrigation; xeriscaping techniques; botanical and common names of materials. Indicate required and provided materials. Indicate all required and provided quantities and sizes of landscape materials. Include all wall, fence and tree staking details. The landscaping plan should reflect all easements including utility, and all above ground utilities or drainage features, etc.

17. Water and sewer connection detail.

18. General location, character, size, height and orientation of proposed signs

19. All pedestrian walkway and sidewalks

20. Building elevations including illustration of screening of roof mounted mechanical equipment

21. Site lighting plan / calculations for parking areas / buildings  
(see Section 20-100)

22. Type and location of mail receptacles

23. Sanitary sewer, potable water and any reuse water plans, which shall indicate the locations and sizes of sanitary and storm sewers, water mains, culverts and other underground structures in or near the project

24. Perspective illustrations of the new development with existing development showing the new development superimposed onto the site (photographs at street level / aerial photos)

- The following computations:

1. Total site square footage/acreage
2. Allowed and proposed density (residential only)
3. Vehicular use calculations (roadway, aisles, parking)
4. Recreational open space (residential only)
5. Square footage / acreage by land use type
6. Impervious / pervious area percentages
7. Parking spaced required / provided
8. Landscape open space calculations

\*The following are the number of sets of plans you will need to submit.

1 full size 24x36 plans and 5 sets of 11 x 17 plans and all files in a flash drive.

***All renderings are to be done in color for all submissions.***

**GENERAL INFORMATION FOR MULTI-FAMILY**  
**\*\*\*CHECK ADDITIONAL CODES WHICH MAY BE APPLICABLE\*\*\***

TOWN OF BAY HARBOR ISLANDS  
 9665 Bay Harbor Terrace  
 Bay Harbor Islands, Florida 33154  
 Office: (305) 993-1786 ~ Fax: (305) 861-1130

**1. Multi-Family Zoning Districts in the Town of Bay Harbor Islands**

*There are 3 Zoning Districts*

- a. **RM-1** is a Waterfront Site
- b. **RM-2** is applied to Non-Waterfront sites
- c. **RM-3** is applied to the large tracts at the tips of the east islands

\*\* Comprehensive Plan Base Density - 34 DUA

\*\*\* The base density can be increased on a case by case basis by acquiring Transfer of Development Rights (TDR) units.

\*\*\*\* Sq. Ft. of lot / 43,560 x units per acre allowed in zoning district = max units allowed

**2. Building Requirements**

**Building Heights**

*RM-1 Block 1,4 and Block 2 Lots 14 thru 29 - Maximum Height 75ft.*

*RM-2 Block 3 and Block 2 Lots 1-13 - Maximum Height 65ft.*

*RM-2 Interior Lots - Maximum Height 65ft.*

*RM-3 Tracts - Maximum height 75ft. May be increased by voter referendum to 120 ft.*

**Landscaping** - Must meet both Town Code and Miami-Dade County minimum of 20% open space requirements. Upgraded plant quantities, sizes, etc is required.

**Parking** - Two (2) parking spaces required per unit. Guest parking required - one space per lot (part of requirement) in front yard. Not required for single lots. If asking for TDR units must provide.

**Minimum Square Footage per Unit**

1. One Bedroom Unit - 900 sq. ft.
2. Two Bedroom Unit - 1150 sq. ft.
3. For each additional bedroom at 200 sq. ft.

**Storage Space** - Per unit 25 sq. ft. with 7ft of headroom required

**3. Setback Requirements**

**East Island - Waterfront Lots (RM-1)**

| <b>Flex Setbacks</b>                                                                      | <b>Front Yard</b>                                                                                              | <b>Waterfront</b> | <b>Side Yard</b>                                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Total encroachment shall not exceed 1/3 of the allowable width or length of the building. | (Street Side)                                                                                                  | (Rear Yard)       | Buildings less than 30 ft. in height - 10 ft.                                                                                                                                                                                                                    |
| No encroachment into the base building setbacks.                                          | Buildings less than<br><br>30 ft. in height - 20 ft.<br>45 ft. in height - 25 ft.<br>75 ft. in height - 30 ft. | 20 ft.            | *For each additional 3 ft. of building height above 30ft. One (1) additional foot of setback for the portion of the structure over 30ft.<br><br>*Single Lots Maximum setback 20ft.<br><br>More than 1 lot developments - 10% of the street frontage ~ Max 22.5ft |

Updated: June 2014

**GENERAL INFORMATION FOR MULTI-FAMILY**  
**\*\*\*CHECK ADDITIONAL CODES WHICH MAY BE APPLICABLE\*\*\***  
**TOWN OF BAY HARBOR ISLANDS**

\* See Town Code Section 23-11(B1) for complete list of regulations

**Continuation - Setback Requirements**

**East Island**

**Interior Lots (RM-2)**

**(Except Blocks - 11, 12, 20 and 21)**

| <b>Flex Setbacks</b>                                                                      | <b>Front Yard</b>                                                                                       | <b>Rear Yard</b>                                                                                                                            | <b>Side Yard</b>                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Total encroachment shall not exceed 1/3 of the allowable width or length of the building. | (Street Side)                                                                                           | Buildings less than 30 ft. in height - 10 ft.                                                                                               | Buildings less than 30 ft. in height - 10 ft.                                                                                                                                                                                                                       |
| No encroachment into the base building setbacks.                                          | Buildings less than 30 ft. in height - 20 ft.<br>45 ft. in height - 25 ft.<br>75 ft. in height - 30 ft. | *For each additional 3 ft. of building height above 30ft.<br>One (1) additional foot of setback for the portion of the structure over 30ft. | *For each additional 3 ft. of building height above 30ft.<br>One (1) additional foot of setback for the portion of the structure over 30ft.<br><br>*Single Lots Maximum setback 20ft.<br><br>More than 1 lot developments - 10% of the street frontage ~ Max 22.5ft |

\* See Town Code Section 23-11(B2) for complete list of regulations

Note: Corner properties have two front yard setback, one side yard and one rear yard

\*\*Corner lots, side setback shall be regarded as those setbacks other than ones abutting the streets and water.

**East Island**

**Tract Sites (RM-3)**

| <b>Flex Setbacks</b>                                                                      | <b>Front Yard</b>                                                                                       | <b>Rear Yard</b> | <b>Side Yard</b>                                                                                                                         |
|-------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Total encroachment shall not exceed 1/3 of the allowable width or length of the building. | (Street Side)                                                                                           | (Rear Yard)      | Buildings less than 30 ft. in height - 20 ft.                                                                                            |
| No encroachment into the base building setbacks.                                          | Buildings less than 30 ft. in height - 20 ft.<br>45 ft. in height - 25 ft.<br>75 ft. in height - 30 ft. | 20 ft.           | *For each additional 3 ft. of building height above 30ft. One (1) additional foot of setback for the portion of the structure over 30ft. |

Note: If a building has supplemental business/commercial uses, the Town may require increased setbacks not to exceed twice the normal setback.

Maximum building length = 260' unless angle of 15 degree or more provided

Maximum building coverage = 40% (60% with garage)

See Town Code Section 23-11(D) for complete list of regulations

## AGENDA ITEM REPORT

March 20, 2024

### ITEM NUMBER: 12.

**ITEM: Consideration and Approval** of an ordinance on first reading amending Section 5-18 of the Town Code to include metal roof materials in the list of permitted roofing materials. Sponsored by Council Member Robert Yaffe. Enclosed is a copy of the draft ordinance.

### DESCRIPTION:

### RECOMMENDED ACTION:

Council's Discretion

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### FINANCIAL ANALYSIS:

There is no fiscal impact to create the ordinance.

### BUDGET IMPACT:

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Submitted By: Yvonne Hamilton, Town Clerk

### ATTACHMENTS

|    |                                                       |
|----|-------------------------------------------------------|
| 1. | BHI TC Staff Report Metal Roofs March 13 2024         |
| 2. | Metal Roof Materials - BHI Draft Ord Mod March 4 2024 |



**TOWN OF BAY HARBOR ISLANDS  
COMMUNITY DEVELOPMENT  
MEMORANDUM**

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**To:** Mayor and Town Council Members  
Town of Bay Harbor Islands

**Thru:** Maria D. Lasday – Town Manager  
Mike Mesa – Town Bldg. Official / Asst. Town Manager  
Joseph S. Geller, Esq. – Town Attorney

**From:** Michael J. Miller, AICP   
Consultant Town Planner

**Date:** March 13<sup>th</sup>, 2024

**Subject:** Town of Bay Harbor Islands  
Potential Land Development Code Amendment  
Roofing Materials – Metal Roof Material  
MMPA Acct. No.: 01-0702-0500A

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**ISSUE**

Since July of 1983 (Ord. No. 409) the Town has had regulations governing the types of allowable roofing materials for all land development projects. There has been only one amendment to these regulations since that time (Ord. No. 567 adopted 3/13/95). It is quite common for local governments to regulate a wide variety of architectural / design type items, including roofing materials. Because of the South Florida climate (heat / humidity / high winds) and desire for higher quality development many communities specify the allowable types of roofing materials (and sometimes prohibited materials), roof colors (impregnated / painted), roof styles (flat tile / barrel tile) for sloped roof surfaces. While the Town Code includes a specific listing of allowable roof materials, a provision has always been included that allows the Town (PZB / now DRB) to consider alternative roof materials to those listed on a case-by-case basis. About 20 years ago the Town started to receive occasion applications to install Standing Seam Metal Roofs on some single-family homes. Accordingly, via the Code requirement of Section 5-18, each of the recent applications was submitted to the Design Review Board (DRB). The DRB reviewed each home's architecture style and approved all of the metal roof requests. The DRB requested that the Town Council consider amending the Code to allow metal roofs by right. At the February 2024 Town Council meeting, Councilmember Yaffe mentioned this subject and proposed a Code amendment be prepared / discussed to allow metal roof materials in the Town by right (no DRB review). MMPA has prepared a draft Ordinance for consideration.

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## **BACKGROUND / ANALYSIS**

Recently, the Town has been receiving a higher number of requests for metal roofing materials on single-family homes. This may be due to the limited availability / cost of concrete roofing materials, or simply a different / modern appearance. Accordingly, via the Code requirement of Section 5-18, each of the recent applications was submitted to the Design Review Board (DRB). The DRB reviewed each home's architecture style and approved all of the metal roof requests.

As stated above, since July of 1983 (Ord. No. 409) the Town has had regulations governing the types of allowable roofing materials for all land development projects. There has been only one amendment to these regulations since that time (Ord. No. 567 adopted 3/13/95). It is quite common for local governments to regulate a wide variety of architectural / design type items, including roofing materials. Because of the South Florida climate (heat / humidity / high winds) and desire for higher quality development many communities specify the allowable types of roofing materials (and sometimes prohibited materials), roof colors (impregnated / painted), roof styles (flat tile / barrel tile) for sloped roof surfaces. While the Town Code includes a specific listing of allowable roof materials, a provision has always been included that allows the Town (PZB / now DRB) to consider alternative roof materials to those listed on a case-by-case basis.

About 20 years ago the Town started to receive occasion applications to install Standing Seam Metal Roofs on some single-family homes. Via the Code requirement of Section 5-18, each of the recent applications was submitted to the Design Review Board (DRB). The DRB reviewed each home's architecture style and approved all of the metal roof requests.

Metal roofs are more commonly used on multifamily or commercial buildings. They tend to portray a "Nautical" look or "Old Florida" look. As of March 2024, about 25 single-family homes in the Town have been allowed to install metal roofs. For new construction projects the roof material is specified on the Site Development Plans. For re-roofing of older structures, the Bldg. Dept. staff reviews and act on building permits. Typically, when the Town receives a building permit application for a new / re-roof, if the requested roofing material complies with Sec. 5-18, the Town staff can administratively approve a building permit per Resolution #1077 adopted by the Town Council in 2008 when a separate free-standing "Board" (PZB / DRB) was created to review & approved certain land development applications.

Following are the current Code provisions:

**Sec. 5-18. - Required materials in roof and mansard fascia construction; approval of design review board.**

(a) All roofs and mansard fascia construction shall be constructed with fire-resisting or noncombustible material and shall be of one of the following materials only, except as provided in paragraph (b) below:

(1) Clay tile;

(2) White concrete tile;

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- (3) Solid-colored cement tile, which color is impregnated with the same color intensity throughout;
  - (4) Thick butt variegated slate;
  - (5) Other materials which may be approved by the design review board.
- (b) All roofs having an incline of less than two and one-half inches per foot shall be constructed of built-up roofing material and gravel.
- (c) Flat roofs which are not visible from the street or from adjacent property by a person standing at ground level, may be constructed of modified bitumen, aluminum coat built-up, or any other water-proofing membrane application provided said application has all required product approvals.
- (d) All reconstructed roofs and mansard fascia construction, alteration or repair shall require the approval of the planning board as being harmonious with other buildings in the proximity thereof.

(Ord. No. 409, §§ 1, 2, 7-11-83; Ord. No. 567, § 1, 3-13-95)

Our research reveals that there are 25+/- existing single-family homes in the Town with Standing Seam Metal Roofs. It is unknown if each home with a metal roof obtained DRB (PZB) approval or if Town staff administratively approved them, despite the Code language. On occasion Bldg. Dept. staff / other Town staff are not fully understanding of a community's entire Land Development Code Regulations. We believe the DRB (PZB) has formally approved 9+/- to date.

Most higher quality communities require higher quality roof materials (concrete / slate) and prohibit somewhat "cheaper" looking or higher maintenance materials such as asphalt shingles or cedar shakes. These materials do not stand up as well in high wind coastal areas and in areas with high heat / humidity. Metal roofs can be attractive but typically also may have maintenance problems. Installation and product / paint application typically dictates the degree of success or failure. In high heat / humidity areas some paint applications often blister or peel on metal roofs. However, some metal materials (copper) can be very attractive and relatively maintenance free. In its natural bronze state, copper looks good and even after it weathers to a green patina color. Metal roofs can experience more frequent failure as panels can lift if not installed properly. It should be mentioned that cement roof tiles can also fail and fly off, but the weight of the tiles and method of attachment typically resists failure in very high winds.

## **SUMMARY / RECOMMENDATION**

The Town has 40-year Code provisions that specify certain allowed roof materials (concrete / clay / slate) and require the DRB to review & approve roofing materials other than those listed in the Code. This may not have been clearly understood by some previous Town staff that administratively approved some.



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Recently the Town received several applications to install Standing Seam Metal Roofs on a few older single-family homes. Due to the Section 5-18 Code provisions the DRB reviewed and approved each of those applications. As these types of roofs are becoming more commonplace the DRB requested the Town Council to revisit the list of roof materials in Section 5-18 and consider allowing metal roofs by right (no DRB special approval). MMPA feels some entity (DRB / designated staff) should review each application to determine if the architecture of the house / other structure would be compatible with a metal roof. At the February 2024 Town Council meeting, Councilmember Yaffe mentioned this subject and proposed a Code amendment be prepared / discussed to allow metal roof materials in the Town by right (no DRB review).

MMPA has prepared the attached draft Ordinance for consideration.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO ALLOWABLE ROOFING MATERIALS IN THE TOWN; AMENDING CHAPTER 5 ENTITLED BUILDING AND CONSTRUCTION; AMENDING ARTICLE 1 ENTITLED IN GENERAL; AMENDING SECTION 5-18 ENTITLED REQUIRED MATERIALS IN ROOF AND MANSARD FASCIA CONSTRUCTION - APPROVAL OF DESIGN REVIEW BOARD TO MODIFY THE LIST OF ALLOWABLE ROOF MATERIALS; PROVIDING FOR ADOPTION OF RECITALS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Town Council periodically studies various land development trends and issues and amends the Town's Land Development Regulations accordingly; and

WHEREAS, the Town Council has studied the current Building and Construction Code provisions of the Town and find that certain modifications are necessary and desirable to address the needs of the community, for development review purposes, and for consistency and correctness, to regulate allowable roof materials in the Town; and

WHEREAS, the Town Council has heard testimony from residents, property owners and the Design Review Board in support for such amendments; and

WHEREAS, the Town Council finds this Ordinance is consistent with the Town's Comprehensive Plan and is necessary for the preservation of the public health, safety and welfare of the Town's residents and property owners; and

WHEREAS, the Town Council held duly advertised public meetings to consider the proposed modifications to the Town's Land Development Regulations.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:**

Section 1: The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Strike-Through = Delete / Underline = New Text

Section 2: That the Town of Bay Harbor Islands Building and Construction Code is hereby amended to modify Section 5-18 to amend the list of allowable roof materials in the Town, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 3: That if any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 4: That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 6: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this \_\_\_\_ day of \_\_\_\_\_, 2024.

PASSED on Second Reading this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
ELIZABETH TRICOCHE - MAYOR

ATTEST:

\_\_\_\_\_  
YVONNE P. HAMILTON, CMC - TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
GREENSPOON MARDER, LLP – TOWN ATTORNEYS  
BY: JOSEPH S. GELLER, ESQ.

## EXHIBIT "A"

### The Town of Bay Harbor Islands, Florida Code of Ordinances is hereby amended as follows:

#### CHAPTER 5

#### BUILDINGS AND CONSTRUCTION

#### ARTICLE I. - IN GENERAL

##### Sec. 5-18. - Required materials in roof and mansard fascia construction; approval of design review board.

(a) Roof materials shall be of high quality, durable, and consistent with local architectural themes. All roofs and mansard fascia construction shall be constructed with fire-resisting or noncombustible material and shall be of one of the following materials only, except as provided in paragraph (b) below:

(1) Clay tile;

(2) ~~White~~ Concrete tile;

(3) Solid-colored or variegated cement tile, which color is impregnated with the same color intensity throughout;

(4) Thick butt variegated slate;

(5) Metal roofs when consistent with the use and architecture of a structure;

~~(5)~~ (6) Other materials which may be approved by the design review board.

(7) Roof materials shall consist of Spanish tile, barrel tile, flat tile, neutral colored stone tile, metal or a similar neutral material of similar quality.

(8) For any roof material installed on a building or structure other than those listed above that existed prior to the adoption of Ordinance No. 567 on March 13<sup>th</sup>, 1995, normal maintenance and repairs to any such existing roof material is allowed. If any such pre-existing nonconforming roof material is replaced, the replacement roof material shall comply with sections (1) through (7) above.

(b) All roofs having an incline of less than two and one-half inches per foot shall be constructed of built-up roofing material and gravel.

Strike-Through = Delete / Underline = New Text

(c) Flat roofs which are not visible from the street or from adjacent property by a person standing at ground level, may be constructed of modified bitumen, aluminum coat built-up, or any other water-proofing membrane application provided said application has all required product approvals.

(d) All reconstructed roofs and mansard fascia construction, alteration or repair shall require the approval of either the ~~planning~~ design review board or administrative staff as established by Resolution as being harmonious with other buildings in the proximity thereof.

## **AGENDA ITEM REPORT**

March 20, 2024

**ITEM NUMBER: 13.**

**ITEM: Discussion** and **Possible** action regarding non-renewal of the contract for the art festival. Sponsored by Mayor Elizabeth Tricoche.

**DESCRIPTION:**

**RECOMMENDED ACTION:**

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**FINANCIAL ANALYSIS:**

**BUDGET IMPACT:**

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Submitted By: Yvonne Hamilton, Town Clerk

**ATTACHMENTS**

None