

MINUTES

ZONING MEETING
KEY BISCAWAYNE, FLORIDA

TUESDAY, AUGUST 26, 2003

COUNCIL CHAMBER
560 CRANDON BOULEVARD

1. **CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the Mayor at 7:00 p.m. Present were Councilmembers Martha F. Broucek, Carol Diaz-Castro, Mortimer Fried, James L. Peters, Robert L. Vernon, Vice Mayor Jorge Mendia and Mayor Robert Oldakowski. Also present were Village Manager Jacqueline R. Menendez, Village Clerk Conchita H. Alvarez and Village Attorneys Gary Resnick and Stephen P. Helfman.

2. **PLEDGE OF ALLEGIANCE:** Mr. Sixto Campano led the Pledge of Allegiance.

The Clerk addressed the Council and the public reporting that the agenda was not posted on the web site due to technical difficulties.

3. **SPECIAL PRESENTATION:** Mr. Juan Kuryla, Assistant Port Director/Intergovernmental Affairs with the Port of Miami and Ms. Becky Hope, Dredging Engineer made a presentation regarding the Dredging Project. Cameron Perry with Coastal Engineers addressed the Council regarding this project.

4. **AGENDA:** The Clerk requested to substitute Item 8D with an ordinance on first reading as Item 7A; Councilmember Broucek requested the addition of a discussion of Ocean Lane Drive as Item 9A3; Councilmember Diaz-Castro requested the addition of a report on the requested repairs at Harbor Drive/Crandon Boulevard intersection as Item 9A4 and Mayor Oldakowski requested the addition of a status report on the Community Center Project as Item 9D3. There was no objection to the agenda changes.

5. **APPROVAL OF MINUTES:** Councilmember Fried made a motion to approve the minutes

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of the June 24, 2003 Regular Council Meeting, the minutes of the July 1, 2003 Regular Council Meeting and the minutes of the July 1, 2003 Budget Workshop. The motion was seconded by Councilmember Broucek and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

6. **BUILDING, ZONING AND PLANNING:** All witnesses giving testimony in the public hearings were sworn in by the Clerk.

Hearing Number RV 15. This hearing is continued from the May 27, 2003 Zoning Meeting.

Armando Chapelli, 925 Mariner Drive, the applicant, is requesting the following variances associated with a dock and boat lift: 1.) waive the maximum 10 ft. extension of a dock into a canal, lake or waterway in order to permit a dock to extend 35 ft. 6 in. into a canal; 2.) waive the maximum 4 ft. 4 in. (10% of the width of a canal) extension of a boat lift into a canal, lake, or waterway in order to permit a boat lift to extend 8 ft. into a canal.

Jud Kurlancheek, Director of Building, Zoning and Planning addressed the Council with the recommendation that Variance Number 1 be denied and Variance Number 2 be approved subject to a finding from the Army Corps of Engineers that the location of the boat lift over the canal will not result in a safety hazard.

Mr. Armando Chapelli, the applicant, addressed the Council regarding the variances.

The Mayor opened the public hearing. Edward Fidalgo, 190 Island Drive; Charles Virgin, 945 Mariner Drive; Helmut Bracke, 270 Island Drive and Sixto Campano, 999 Mariner Drive addressed the Council. The Mayor closed the public hearing.

The Attorney addressed the Council regarding this hearing.

Councilmember Fried made a motion to deny the variance requesting to waive the maximum 10 ft. extension of a dock into a canal, lake or waterway in order to permit a dock to extend 35 ft. 6 in. into a canal. The motion was seconded by Councilmember Vernon and approved by a 6-1 roll call vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes. Councilmember Fried voting No.

Vice Mayor Mendia made a motion to continue the hearing on the request to waive the maximum 4 ft. 4 in. (10% of the width of a canal) extension of a boat lift into a canal, lake, or waterway in order to permit a boat lift to extend 8 ft. into a canal, to the October 28, 2003 Zoning Meeting. The motion was seconded by Councilmember Peters and approved by a 6-1 roll call vote. The vote was as follows: Councilmembers Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski

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voting Yes. Councilmember Broucek voting No.

Hearing Number SP-08. Grand Bay Hotel Partners, Ltd., 455 Grand Bay Drive, the applicant, is requesting to modify an approved development tract review plan by constructing a 44 ft. x 41 ft. Chickee over an area that presently contains tables with umbrellas adjacent to the Sand Bar Restaurant.

Director Kurlancheek addressed the Council recommending approval of the request subject to the following conditions: 1.) A concrete block wall with no openings shall be constructed along the south of the chickee that faces the Sands Condominium. The wall shall connect with the Sand Bar Restaurant; 2.) The structure shall have a solid, opaque ceiling; 3.) The use of the structure is solely restricted to tables and chairs for the adjacent restaurant. With this context, there shall be no meetings which involve a dais, speeches, or presentations to an audience; 4.) There shall be no amplification of any sound and 5.) All use of the area shall terminate at 11:00 p.m. This includes preparing the area for the next day's work.

Carter McDowell, Attorney representing the applicant and Donald Lefton, Coconut Grove addressed the Council.

The Mayor opened the public hearing. Silvia Bernstein Batista, 613 Ocean Drive; Ricardo J. Fernandez, 455 Grand Bay Drive; Camile Guething, 260 Seaview Drive; Scott Bass, 177 Ocean Lane Drive and Jim Taintor, 355 Harbor Drive addressed the Council. The Mayor closed the public hearing.

Public Safety Director, Chief John C. Gilbert addressed the Council regarding the safety of the chickee hut.

Councilmember Vernon made a motion to approve the request with the following conditions: 1.) A concrete block wall with no openings shall be constructed along the south of the chickee that faces the Sands Condominium. The wall shall connect with the Sand Bar Restaurant; 2.) The use of the structure is solely restricted to tables and chairs for the Sand Bar restaurant. With this context, there shall be no meetings which involve a dais, speeches, or presentations to an audience. 3.) There shall be no use of portable sound systems. Any music shall be played through the permanent sound system, which shall be designed to minimize any spillover sound to the south; 4.) All food services and music shall terminate at 11:00 p.m. on weekdays and 12:00 a.m. on weekends and 5.) The structure should comply with all applicable building and life safety codes. The motion was seconded by Vice Mayor Mendia and approved by a 7-0 roll call vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

At this time the Council took a 5 minute recess. The meeting was reconvened at 9:40 p.m.

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The Mayor requested the deferral of Items 8C and 8D. There was no objection to the request.

7. **ORDINANCES:** The Clerk read the following ordinance, on first reading by title:

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING THE FILING OF A CERTIFICATION WITH THE FEDERAL COMMUNICATIONS COMMISSION TO OBTAIN AUTHORITY TO REGULATE BASIC CABLE TELEVISION RATES AND ADOPTING ADMINISTRATIVE REGULATIONS CONSISTENT WITH THE FEDERAL COMMUNICATIONS COMMISSION'S REGULATIONS FOR SUCH RATE REGULATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

Councilmember Fried made a motion to approve the ordinance on first reading. The motion was seconded by Vice Mayor Mendia.

Village Attorney Gary Resnick addressed the Council regarding this ordinance.

The Mayor opened the public hearing. There were no speakers present. The Mayor closed the public hearing.

The ordinance was adopted on first reading by a 7-0 roll call vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

The second reading will be on September 9, 2003.

The Clerk read the following ordinance, on second reading, by title:

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING THE VILLAGE CODE, AMENDING CHAPTER 2 "ADMINISTRATION" AT ARTICLE I "IN GENERAL", BY AMENDING PARAGRAPH (a) "CREATED" OF SECTION 2-1 "CREATION OF DEPARTMENTS", BY REVISING THE DESCRIPTION OF THE "EMERGENCY SERVICES DEPARTMENT" TO BE THE "PUBLIC SAFETY DEPARTMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

The Manager addressed the Council regarding this ordinance.

Councilmember Fried made a motion to approve the ordinance on second reading. The motion was

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seconded by Councilmember Diaz-Castro.

The Mayor opened the public hearing. There were no speakers present. The Mayor closed the public hearing.

The ordinance was adopted on second reading by a 7-0 roll call vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

The Clerk read the following ordinance, on second reading, by title:

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 2 "ADMINISTRATION" OF THE VILLAGE CODE BY CREATING A NEW ARTICLE VIII "COMMUNITY CENTER ADVISORY BOARD"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Diaz-Castro made a motion to approve the ordinance on first reading. The motion was seconded by Vice Mayor Mendia.

The Mayor opened the public hearing. Jim Leavitt, 240 Island Drive addressed the Council. The Mayor closed the public hearing.

The Attorney addressed the Council regarding this ordinance.

Mayor Oldakowski made an amending motion to amend **Section 2-150 (d)** to include the Mayor of the Youth Council. The motion was seconded by Councilmember Peters and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

Mayor Oldakowski made an amending motion to amend **Section 2-154 (a) (5)** by adding fees. The motion was seconded by Councilmember Peters and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

There was extensive discussion from Council regarding this ordinance.

Councilmember Diaz-Castro made an amending motion to amend **Section 2-154** by adding a new subsection to Provide recommendations for Financial Performance. The motion was seconded by Vice Mayor Mendia and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes. Councilmember Broucek made a motion to remove the following sentence in **Section 2-154. Jurisdiction. (a):** ~~The Board may consider or take action on a matter only after receipt of a specific~~

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~~written assignment from either the Village Council or Village Manager.~~ The motion was seconded by Councilmember Peters and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

The ordinance as amended was adopted on second reading by a 7-0 roll call vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

The Mayor addressed the Council requesting that Councilmembers submit names of individuals who will qualify as candidates for this Board to the Village Manager within the next 30 days.

8. **RESOLUTIONS:** The Clerk read the following resolution by title:

A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAVNE, FLORIDA, AUTHORIZING ACQUISITION OF NEW FIREARMS FOR POLICE OFFICERS OF THE VILLAGE'S PUBLIC SAFETY DEPARTMENT; DECLARING USED FIREARMS OWNED BY THE VILLAGE TO BE SURPLUS AND AUTHORIZING THE VILLAGE MANAGER TO PROVIDE FOR THE DISPOSITION OF SUCH SURPLUS PROPERTY; PROVIDING FOR EFFECTIVE DATE.

Councilmember Fried made a motion to approve the resolution. The motion was seconded by Councilmember Peters.

The Manager and Deputy Chief of Police Brett Capone addressed the Council regarding this resolution.

The resolution was approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

The Clerk read the following resolution by title:

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAVNE, FLORIDA, AMENDING RESOLUTION 2001-10 WHICH IMPLEMENTED THE EXEMPTION FROM NOISE REGULATIONS FOR THE VILLAGE'S CIVIC CENTER PROJECT PURSUANT TO SECTION 17-5(B)(2) OF CHAPTER 17 "NOISE" OF THE VILLAGE CODE; SO AS TO MODIFY THE CONDITIONS OF SUCH EXEMPTION FOR THE COMMUNITY CENTER BASEMENT LEVEL CONSTRUCTION; PROVIDING FOR EFFECTIVE DATE.

Councilmember Fried made a motion to approve the resolution. The motion was seconded by Councilmember Broucek.

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The Manager and Paul Abbott, Construction Manager for the project addressed the Council regarding this resolution.

Blanca Mesa, 544 Fernwood Road addressed the Council.

The resolution was approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

The Clerk read the following resolution by title:

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA; ADOPTING GOVERNOR JEB BUSH'S COMMUNITIES FOR A LIFETIME INITIATIVE IN ORDER PROVIDE THE IDEAL CLIMATE IN WHICH RESIDENT SENIORS REMAIN INDEPENDENT IN THEIR OWN COMMUNITIES; PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Vernon made a motion to approve the resolution. The motion was seconded by Councilmember Peters.

Recreation Director Todd Hofferberth addressed the Council regarding this resolution.

The resolution was approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

9. **REPORTS AND RECOMMENDATIONS:** The following items were discussed:

Mayor and Councilmembers. Vice Mayor Mendia made a presentation to the Council regarding code enforcement, resident and governmental responsibilities. The Manager was directed to look into all the issues presented by Vice Mayor Mendia.

Councilmember Diaz-Castro addressed the Council regarding the Seaquarium expansion history.

Councilmember Diaz-Castro made a motion to extend the meeting until 11:10 p.m. The motion was seconded by Councilmember Vernon and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

The Attorney addressed the Council regarding the Seaquarium expansion recommending the adoption of a resolution dealing with this matter.

The Clerk read the following resolution by title:

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA; RECOMMENDING THAT THE MIAMI-DADE BOARD OF COUNTY

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COMMISSIONERS RECONSIDER AND RESCIND THE JULY 22, 2003 SECOND AMENDMENT TO THE AMENDED AND RESTATED LEASE BETWEEN MIAMI-DADE COUNTY AND MARINE EXHIBITION CORPORATION D/B/A THE MIAMI SEAQUARIUM; PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Peters made a motion to approve the resolution. The motion was seconded by Councilmember Broucek and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

Councilmember Fried made a motion to extend the meeting until 11:20 p.m. The motion was seconded by Councilmember Broucek and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

Village Attorney. The Attorney did not submit a report.

Village Clerk. The Clerk submitted to the Council a copy of the following proclamations issued by the Office of the Mayor during the month of August 2003: proclaiming August 25 thru September 1, 2003 as Village of Key Biscayne Firefighters Appreciation Week; proclaiming September 17-23, 2003 as Constitution Week and proclaiming August 21, 2003 as City of Doral Day.

Village Manager. The Manager addressed the Council requesting the cancellation of the September 2, 2003 Regular Council Meeting and the addition of a Regular Council Meeting on September 9, 2003 (prior to the First Budget Hearing).

Councilmember Broucek made a motion to cancel the Regular Council Meeting scheduled for Tuesday, September 2, 2003 and the addition of a Regular Council Meeting on September 9, 2003 (prior to the First Budget Hearing). The motion was seconded by Vice Mayor Mendia and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

The Manager addressed the Council regarding the need to execute the attached assignment agreement with BFI Waste Systems of North America, Inc.

Councilmember Fried made a motion to authorize the Village Manager to execute the attached assignment agreement with BFI Waste Systems of North America, Inc. The motion was seconded by Councilmember Diaz-Castro and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

The Manager addressed the Council regarding a concert on Virginia Key scheduled for Labor Day Weekend. The Manager reported that the Village was very successful working with City of Miami

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and Miami-Dade County and the concert was moved to Bicentennial Park.

At this time Councilmember Broucek addressed the Council regarding Ocean Lane Drive.

Councilmember Fried made a motion to extend the meeting until 11:25 p.m. The motion was seconded by Councilmember Fried and approved by a 7-0 voice vote. The vote was as follows: Councilmembers Broucek, Diaz-Castro, Fried, Vernon, Vice Mayor Mendia and Mayor Oldakowski voting Yes.

The Mayor reported that the Village received the approval to go ahead with the Community Center dewatering process.

10. **OTHER BUSINESS/GENERAL DISCUSSION:** There was no further business discussed.

11. **SCHEDULE OF FUTURE MEETINGS/EVENTS:** A schedule of future meetings and events was presented to the Council.

12. **ADJOURNMENT:** The meeting was adjourned at 11:25 p.m.

Respectfully submitted:

*Conchita H. Alvarez, CMC
Village Clerk*

Approved this 9th day of September, 2003:

*Robert Oldakowski
Mayor*

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE VILLAGE COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT A MEETING OR HEARING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR SUCH PURPOSE, 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.