



Fort Myers Beach Town Council

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

Agenda

Monday, January 8, 2024

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

- A. Request from Council Member King to appear virtually

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

V. PUBLIC COMMENT

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

VII. PRESENTATIONS

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

IX. APPROVAL OF MINUTES

- A. Town Council - December 18, 2023

X. CONSENT AGENDA

- A. Resolutions 24-01, 24-02, 24-03 and 24-04 Extending Local State of Emergency - Hurricane Ian

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

- B. Resolutions 24-05, 24-06, 24-07 and 24-08 Extending Local State of Emergency - Hurricane Idalia

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE

OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

C. Resolution 23-182; Town Council Policies and Procedures

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.

D. 24-10; Bayside Veterans Park Name Adoption

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE NAME CHANGE OF BAYSIDE PARK TO BAYSIDE VETERANS PARK; AND PROVIDING FOR AN EFFECTIVE DATE.

E. ITB-24-01-EN; Estero Island Beach Nourishment and Hurricane Recovery Project

Reject all ITB-24-01-EN proposals for the Estero Island Beach Nourishment and Hurricane Recovery Project with cause, since all bids far exceed the estimated or budgeted amount as provided in the Invitation to Bid and Section 2-480(11) of the Town Code, and provide direction to staff to re-bid the project.

F. Electric to Town Hall Trailers

Request to waive the procurement policy based on an emergency finding and authorize the Town Manager to sign an agreement in the amount of \$73,620.00 with Kirkwood Electric to provide electrical services to the new Town Hall facility which will eliminate an interruption of the delivery of municipal services to the Town.

G. Special Event: Farmer's Market

Request for use of Time Square for a Farmer's Market on Saturdays

XI. ITEMS REMOVED FROM CONSENT AGENDA

XII. PUBLIC HEARINGS

A. Ordinance 24-01; TPI CPD Amendment

First Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 18-04, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS

#2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Open the first public hearing and schedule for second reading and final adoption on January 22, 2024 at 9:00 a.m.

- B. Resolution 23-186; VAR20230212, 6642 Estero Blvd.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230212 TO ALLOW AN ELEVATED EMERGENCY GENERATOR CLOSER TO THE ESTERO BOULEVARD STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING FOR THE PROPERTY LOCATED AT 6642 ESTERO BLVD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- C. Resolution 23-190; VAR20230162, 21391 Widgeon Terrace

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230162, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

- D. Resolution 23-191; VAR20230264, 5350 Estero Blvd.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230264 TO DECREASE THE REQUIRED 15-FOOT SIDE YARD SETBACKS BY 8.5 FEET TO ALLOW 6.5-FOOT SIDE SETBACKS, FOR THE COMMERCIAL RESORT ZONED PROPERTY AT 5350 ESTERO BLVD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

XIII. ADMINISTRATIVE AGENDA

- A. Vacancy on Town Council

Acknowledge receipt of Council Member Veach's resignation on December 26, 2023, declare a vacancy on Town Council, and provide direction to the Town Manager and Town Attorney regarding next steps

to fill the vacancy.

XIV. FINAL PUBLIC COMMENT

XV. TOWN MANAGER'S ITEMS

XVI. TOWN ATTORNEY'S ITEMS

XVII. COUNCILMEMBERS ITEMS AND REPORTS

XVIII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON FACEBOOK AND YOUTUBE.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.



For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.



Fort Myers Beach Town Council

**Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Monday, December 18, 2023

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veatch and Council Member Woodson.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Remove item A. and pull item B. for discussion. Add approval of fireworks to the Town Manager's Items.

Council Member King moved to approve the final agenda as amended; seconded by Council Member Woodson.

The motion carried unanimously.

V. PUBLIC COMMENT

Dale and Jay Bonnema, resident, described the noise from the Rude Shrimp Co. disrupting his property. He stated that bars were not allowed in commercial marine zones and asked for help stopping the loud music. Mayor Allers suggested that they meet with the town manager.

Becky Weber, resident, commented that the storm drains were not working and Curlew St. had two feet of water over the weekend. She requested a timeline for when every street drain would be fixed.

A resident on Curlew St. requested a list of when the drains will be fixed on the side streets. He stated that they were selling their property because they were tired that nothing was being done for the health, safety and maintenance of the town.

Linda Miller from the Farmer's Market thanked the council and members of the staff for doing a great job.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach recognized the chili cook-off and appreciated the mayor's dance.

Council Member Woodson thanked the town for cleaning up Times Square.

Vice Mayor Atterholt commended the staff for cleaning up on Sunday morning and was thankful for the direction that leadership was heading. He recognized the town manager and town staff.

Council Member King thanked all the staff and the town manager for working hard on Sunday.

Mayor Allers recognized the Bay Oaks staff for the sleepover at the Mound House. He congratulated Scott Allen and Kevin Clark for coming in first place at the chili cook-off.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

A. Audit Committee - Chair Jeff Taylor

Chair Taylor reported that the Audit Committee met last week for the first time. He introduced himself and shared his background. He described the duties of the Audit Committee and listed the members. He noted that the Audit Committee voted to approve the audit, authorize the town manager to execute an engagement letter with Mauldin & Jenkins and recommended that the town implement a record storage system to protect against the destruction of paper records in the event of a disaster. They also recommended that the town start an ERP (Enterprise Resource Planning) software selection process. He described a typical ERP system. He stated that the committee had not discussed anything to do with looking forward financially yet, but he was confident that the finance department had a plan.

VIII. APPROVAL OF MINUTES

A. Town Council - December 4, 2023

Council Member King moved to approve the minutes; seconded by Mayor Allers.

The motion carried unanimously.

B. Management & Planning Session - December 7, 2023

Council Member King moved to approve the minutes; seconded by Mayor Allers.

The motion carried unanimously.

IX. CONSENT AGENDA**A. Resolution 23-184; Town Council Policies and Procedures****A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.**

Removed to correct pagination issues.

B. Moss Marina Farmer's Market**Motion to amend the Moss Marina Farmer's Market special event permit to add a vendor that would allow tasting and selling alcohol from a rum distillery.**

Council Member Veach questioned whether adding alcohol at that location would be tolerable to the neighborhood. Linda Miller stated that the market at Moss Marina was very quiet and explained that the Wicked Dolphin wanted to offer rum samples to help sell their liquor. Town Attorney Vose stated that the Wicked Dolphin complied with the state law and would have to comply with the town's special event permit requirement. Ms. Miller noted that Moss Marina also had the proper liquor licenses from the state.

Council Member Veach was concerned about expanding operations at Moss Marina in light of the complaints from the neighborhood.

Council Member Woodson moved to approve the special event permit; seconded by Council Member King.

The motion carried 4-1, with Council Member Veach dissenting.

X. PUBLIC HEARINGS**A. Ordinance 23-18 Post Disaster Buildback Amendment****Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.**

Mayor Allers read the title of the ordinance. Community Development Planner Sarah Propst reviewed the background of the issue as stated on the blue sheet. She reviewed the changes made as suggested at the first reading. Council Member Veach requested clarification regarding parking underneath a unit and taking the space above to use as habitable space.

Planner Propst noted that the intent was to allow a small amount of additional square footage without increasing density. She added that the structure would be substantially the same size.

Council Member Veach brought up small hotels and the impact of additional density. Planner Propst replied that the language would not add enough square footage to make that much difference. Council Member Veach was concerned that it could be a little open-ended as to what people could do. He was hesitant to support it without knowing what the impact would be.

Planner Propst commented that FAR (Floor Area Ratio), the height and setbacks would still have to be met.

Public comment:

Larry Smith, resident, described building back his 1937 house with more bedrooms and baths so he could rent out the second unit. He stated that his lot was unusual and that over 10' x 60' of land on his property was unowned. He explained how it was created and noted that he would apply for a variance to build 25 feet from the seawall instead of from the back of his property line. He distributed information regarding his property.

Christopher Mosteiro, resident, supported the policy because it would allow him to rebuild his home. He thanked the town staff for their hard work. He requested that the number of bedrooms and bathrooms not be limited based on square footage.

John McClain, resident, commented that the LPA (Local Planning Agency) suggested allowing homeowners to build the number of bedrooms and bathrooms they chose within the existing footprint. He described how he hoped to rebuild his house in a monthly rental zone and asked that they remove the restrictions on additional bedrooms and bathrooms for residential property. Planner Propst stated that the ordinance would not apply to his situation.

Town Attorney Vose described the new business impact estimate requirement and noted it had to be posted in the advertisement. Public comment closed.

Mayor Allers did not support adding more bedrooms because property owners could request a special exception with public input from their neighbors. Planner Propst explained that the uses for single-family homes, duplexes and triplexes were different from hotel/motel uses and the density allowances were different. Mayor Allers was concerned about the financial aspects and cost of rebuilding. He felt that they should allow it for the individual owners and the hotels, or they should not allow it for either.

Planner Propst indicated they could change it to allow hotels to request more rooms through a special exception process like residential owners.

Vice Mayor Atterholt moved to approve that hotels may request an increase in the number of bedrooms and bathrooms through the special exception process and to approve the ordinance with the discussed change to section 2. e. 3.; seconded by Council Member King. The motion carried unanimously.

B. Resolution 23-185; VAR20230142 - 923 Third Street

APPROVE/ APPROVE WITH CONDITIONS/ DENY A VARIANCE FROM LDC SECTION 34-638 TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS FOR THE FRONT SETBACK IN THE RC ZONING DISTRICT FOR PROPERTY LOCATED AT 923 THIRD STREET; TO ALLOW 100-FEET OF ADDITIONAL BUILDING COVERAGE OVER THE MAXIMUM ALLOWED.

Town Clerk Baker stated that all notices were properly advertised and swore in those providing testimony. Mayor Allers read the title of the resolution. Ex

parte communications: Council Member Woodson knows the property, and Council Member Veach checked out the property on LEEPA (Lee County Property Appraiser) and heard the applicant's public comments. No disclosures from other members. The applicant received a copy of the agenda and materials.

Community Development Senior Planner Jason Smalley reviewed the request for two variances as stated on the blue sheet. He indicated that he did not hear opposition from the neighbors.

Chris Mosteiro stated that his house flooded 11 times during the first year he owned it and explained his design to elevate it.

No public comment.

Council Member King moved to approve the resolution; seconded by Council Member Woodson.

The motion carried unanimously.

XI. ADMINISTRATIVE AGENDA

A. Resolution 23-189; Mooring System Replacement Construction Management Services

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #21 OF CONTRACT RFQ-20-06-AD BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR MOORING SYSTEM REPLACEMENT CONSTRUCTION MANAGEMENT SERVICES IN TOWN OF FORT MYERS BEACH CANALS FOR A COST NOT TO EXCEED \$14,168.00, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Environmental Projects Manager Chadd Chustz reviewed the reasons for the supplemental task agreement. He stated the Mooring Field was operational with 13 balls.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member King.

The motion carried unanimously.

B. Resolution 23-185; Temporary Dinghy Dock

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING THE TOWN TO PROCURE TWO FLOATING DOCKS FROM SNOOK BIGHT MARINA IN AN AMOUNT NOT TO EXCEED \$2,000, AUTHORIZING THE TOWN MANAGER TO PROCURE COASTAL ENGINEERING CONSULTANT, INC. SERVICES AND ADDITIONAL MATERIALS TO INSTALL THE FLOATING DOCKS TO TEMPORARILY SERVICE THE MOORING FIELD IN AN AMOUNT NOT TO EXCEED \$4,000, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Projects Manager Chustz thanked the Snook Bight Marina manager for offering their docks to the town at a reduced rate.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member Veach.

The motion carried unanimously.

C. FY2022 Audit Report

Accept FY2022 Audit Report prepared by Mauldin & Jenkins

Finance Director Joe Onzick reported that there were no findings and the audit opinion was clean. Findings from previous audits have been cleared up and he praised the work of the staff and what was accomplished over the year.

Council Member Veach moved to accept the report; seconded by Council Member Woodson.

The motion carried unanimously.

D. Authorize Engagement Letters with Mauldin & Jenkins to Provide Auditor Services for Fiscal Year 2023

Authorize the Town Manager to execute the Engagement Letters with Mauldin & Jenkins to provide independent external auditor services for Fiscal Year 2023

Director Onzick noted the Audit Committee recommended the approval of engagement letters with Mauldin & Jenkins.

Council Member King moved to authorize; seconded by Council Member Veach.

The motion carried unanimously.

E. Rename Bayside Park

Adopt new name for Bayside Park that was chosen by public survey and includes a reference to the veterans memorial that is planned at the Park.

Town Manager Hyatt stated that a survey was created and 390 respondents chose their favorite name from four options. The top choices in order of preference were Bayside Veterans Park, Bayside Veterans Memorial Park, Veterans Memorial at Bayside Park and Veterans Memorial Bayside Park. All council members agreed with the public and chose Bayside Veterans Park.

Town Manager Hyatt will draft a resolution to formalize the name at the next meeting.

XII. FINAL PUBLIC COMMENT

Eddie Rood, resident, discussed meetings and conversations with the FWC (Fish & Wildlife Conservation). One issue on the south end was the large field of sand spurs and he suggested that the FWC be allowed to spray herbicides. Australian Pines were sprouting up and down the beach and although the FWC was authorized to control the pines within the critical wildlife area (CWA), they had no jurisdiction outside the CWA.

The FWC asked that the council allow Projects Manager Chustz to work with them to remove the pines outside the CWA. He stated that the FWC will meet with property owners in January to describe how the CWA worked.

Mr. Rood described conversations with the FWC regarding personalizing the CWA by adopting an additional name for the designated area. He proposed that the council put out a survey with the choice of Dan Hughes CWA or the Daniel L. Hughes CWA. Mayor Allers suggested that Mr. Rood meet with the town staff and questioned whether MERTF should be involved. Mr. Rood stated that he was on MERTF's agenda for the last meeting, but the committee voted to remove him from the agenda.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hyatt reported that the staff cleaned up from the weather yesterday and continued today. The street signs project on Estero continues and will move to the side streets soon. The streetlight cycle at Crescent St. will be adjusted to help move traffic. FP&L (Florida Power & Light) will install 17 solar lights on Old San Carlos next week. He noted a solar light had been installed in the parking lot behind the Surf Shop and three would be added to Bayside Park. Director Culture, Parks & Recreation Jeff Hauge stated that FDOT (Florida Department of Transportation) needed the town council to officially approve the fireworks and the bridge closure before issuing the permit. Numerous anonymous donors contributed over \$55,000.00 to the fireworks, which will be one of the best shows in Florida. The fireworks will be set off from a barge approximately 1,000 feet off of the pier.

Mayor Allers moved to approve the closure of the bridge and fireworks on December 31, 2023/January 1, 2024; second by Council Member Veach. The motion carried unanimously.

Town Manager Hyatt congratulated Jason Freeman for completing his Master of Public Administration.

Operations and Compliance Director Frankie Kropocek reported that the town was waiting for the SRF's (State Revolving Fund) final notification before they could start working on the side streets. He noted that all the low-lying streets would be completed first and Tetra Tech would be in charge of the operation. He hoped to start in mid-January and noted the list of high-priority streets would be uploaded to the town's website.

Director Kropocek stated the trailers should be on the property by the end of the week and would be put together within five to seven days.

XIV. TOWN ATTORNEY'S ITEMS

A. Persuad Properties FL Investments, LLC

Town Attorney Vose reviewed the proposed settlement agreement and noted it was a compromise. The settlement amount was \$250,000.00, with a \$500,000.00 good faith payment to be deposited into a trust account with Roetzel & Andress. After notification that the funds were received, the town manager would direct inspection of the properties to ensure compliance. If compliance was maintained, the funds would be released. If a violation was

suspected, the code enforcement officer would issue a courtesy notice to correct the violation and the escrow agent would be notified. If the violation was not addressed, it would go before the Special Magistrate. The bond would be at risk and released to the town if the Special Magistrate determined a violation existed. Director Kropocek stated that the parking lot on Estero and the two properties next to the Junkanoo were in full compliance. Vice Mayor Atterholt questioned whether the tree stump next to his parking lot on his property would be removed. Director Kropocek was sure they could reach an agreement.

Terry Persaud stated that he needed a DEP (Department of Environmental Protection) permit to remove the stump, which would take six months.

Attorney Sarah Spector from Roetzel & Andress clarified that the agreement did not cover the Junkanoo property, just the two houses next to it. Council Member Veach questioned why the compliance did not match the description of what was being waived for fines and liens. Attorney Spector replied that the properties next to the Junkanoo were under contract, and they hoped to get the liens removed so Mr. Persaud could sell the properties. Council Member Veach suggested that a clause be added that if Mr. Persaud sold the properties within a year, the money would be returned to him. Town Attorney Vose did not oppose adding the clause.

Attorney Spector reviewed the history of noncompliance with the parking lot and noted the parking lot was now being used for public parking and was in compliance. Vice Mayor Atterholt questioned whether a timeline to remove the stump could be added to the agreement. Council Member Woodson suggested adding that the DEP permit had to be applied for within 30 days and the stump be removed within 30 days of receiving the permit. Mr. Persaud requested 60 days for application and 30 days after receiving the permit. Council members agreed.

Kathy Stefanski represented the Fort Myers Beach Chamber of Commerce and was grateful to Mr. Persaud for allowing them to have the Roxie trailer on his parking lot rent-free.

Annette described how Mr. Persaud helped her open her kiosk in Times Square by cleaning up properties. She stated she was grateful to him for the opportunity.

Mr. Persaud stated that he went above and beyond to create an agreement that he did not agree with, but it was time to get it done. Mayor Allers was concerned about his language and Mr. Persaud clarified that he disagreed with the monetary settlement but would comply with the agreement.

Town Attorney Vose described the lien process and noted there was no guarantee that the town would get the amount of the lien because it would have to go before a court of law to determine whether the lien was valid. She summarized the three changes discussed and Attorney Spector and Mr. Persaud agreed.

Council Member Woodson moved to approve, as amended, the three items discussed and authorize the mayor to sign once the changes were made; seconded by Council Member King.
The motion carried unanimously.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Woodson requested an update regarding cleaning up Times Square by the pier. Director Kropocek replied that Mr. Persaud obtained permission from the surrounding businesses to install a chain link fence to alleviate any problems.

Council Member Veach questioned whether an aesthetic tool regarding staggering rooflines on a building was available in the code. Planner Propst replied there was nothing in the code to encourage that design and most wanted to build to the maximum height. She was not sure how the town could implement that. Council Member Veach addressed sand spurs and noted if the FWC asked to spray herbicides, the town council could consider the request. He stated that choosing a name for the CWA could be problematic for residents and that the entire Estero Island CWA had a lot of history. Mayor Allers questioned why Mr. Rood was removed from the agenda. Council Member King explained that Mr. Rood was added to the agenda by staff without consulting with MERTF and Mr. Rood was allowed to speak during public comment. Mayor Allers favored adding sand spurs, Australian Pines and renaming the CWA to the MERTF agenda. Council Member Veach was seriously concerned about the invasion of privacy with Form 6. He felt that revealing personal financial information was an invitation to a hacker or burglar. He was leaning toward resigning from the Council before January 1, 2024. Council Member King stated that a council member in Naples was resigning because of the form. Town Attorney Vose added that local officials on the East Coast were also resigning. Council Member Veach stated it was a personal issue for him and had nothing to do with anything else. Town Attorney Vose indicated that the council would have to recognize his resignation and the majority of the council would fill the vacancy until a successor was chosen at the next election.

Mayor Allers thanked Sunstream, Neil Hopgood and staff for welcoming the town and hosting meetings. There was a vacancy on the Citizen's Advisory Committee and he encouraged interested parties to contact Town Clerk Baker.
No items from other members.

XVI. ADJOURNMENT

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

The meeting was adjourned at 12:50 p.m.

1. **Requested Motion:**

Meeting Date: January 8, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Extending the local state of emergency provides the Town with the needed flexibility to respond to the catastrophic disaster caused by Hurricane Ian and maintains the Town's eligibility for federal and state reimbursement funding for the costs of recovery.

What the action accomplishes:

Extends the Town's Declaration of state of local emergency.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

Hurricane Ian has caused a catastrophic disaster in the Town, causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas. Approving and ratifying these Resolutions will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 22-34.

Attachments:

1. 24-01, Extending Declaration of Local Emergency Ian 1.9.24-1.15.24
2. 24-02, Extending Declaration of Local Emergency Ian 1.16.24-1.22.24
3. 24-03, Extending Declaration of Local Emergency Ian 1.23.24-1.29.24
4. 24-04, Extending Declaration of Local Emergency Ian 1.30.24-2.5.24

Financial Impact:

6. **Alternative Action**

Not adopt resolutions and the end the Local State of Emergency for Fort Myers Beach

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/26/2023
Approved - 12/26/2023
Approved - 12/28/2023
Final Approval - 12/28/2023

RESOLUTION 24-01

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 9th day of January 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of January 2024.

RESOLUTION 24-02

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 16th day of January 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

ADOPTED this 8th day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of January 2024.

RESOLUTION 24-03

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 23rd day of January 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of January 2024.

RESOLUTION 24-04

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 30th day of January 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of January 2024.

1. **Requested Motion:**

Meeting Date: January 8, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. 24-05, Extention of Local Emergency - Idalia 1.9.24-1.15.24
2. 24-06, Extention of Local Emergency - Idalia 1.16.24-1.22.24
3. 24-07, Extention of Local Emergency - Idalia 1.23.24-1.29.24
4. 24-08, Extention of Local Emergency - Idalia 1.25.24-2.5.24

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/26/2023
Approved - 12/26/2023
Approved - 12/28/2023
Final Approval - 12/28/2023

RESOLUTION NUMBER 24-05

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of January 2024.

RESOLUTION NUMBER 24-06

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of January 2024.

RESOLUTION NUMBER 24-07

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of January 2024.

RESOLUTION NUMBER 24-08

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

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WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

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2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
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 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
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5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
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 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
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 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
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 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of January 2024.

1. **Requested Motion:**

Meeting Date: January 8, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

At the December 7, 2023, Ft. Myers Beach Management & Planning Session, the Town Council reviewed and discussed its current policies and procedures and requested several changes as shown on the Exhibit to Resolution highlighted in yellow. A summary of the additional changes follows:

1. Page 12, #4 regarding use of electronic communication during meetings - Language was added to clarify such communication may occur during a meeting if it was not disruptive to the orderly conduct of the meeting. As discussed, any emails/text that involve public business are public records regardless of if the device used was Town or personal equipment.
2. Page 12, #6 regarding gifts – Language was added to refer to Florida law as far as interpretation of the paragraph.
3. Page 14, Added Items Removed From Consent Agenda.
3. Page 27 - The typo was corrected and the word "next" was deleted.
4. Charts on Pages 29 and 30 – Reference to "Coffee/muffins" was deleted and the time slot was identified as "Public Gathering."

Attachments:

1. 23-182, Exhibit A to resolution 23-183 TC PnP 1.2
2. 23-182, Final Resolution 23-182 re Adopting Amended Town Council Policies and Procedures Manual - ns suggestions - 12-18-2023

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/2/2024
Approved - 1/2/2024
Approved - 1/2/2024
Final Approval - 1/3/2024

Town of Fort Myers Beach Town Council
Policies and Procedures Manual
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		¶ A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.¶
		¶ WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and¶
		¶ WHEREAS, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordina... [15]
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1. Introduction

This Town Council Policies and Procedures Manual is for the purpose of helping the Council Members in the discharge of their duties. They are intended to be guidelines, not “rules” on how to conduct business. Town Council may vary from these policies and procedures on a case-by-case basis by a majority vote unless in conflict with Florida law, the Town Charter, the Land Development Code, Code of Ordinances, Comprehensive Plan or other Town guiding documents. As the Town Council continues to discover situations that are unique to Fort Myers Beach, it will want to update and amend this manual. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of Council will find in one handy reference, answers to policy and procedure questions that come up from time to time. By having an agreed-upon guide, members of Council also may develop common expectations on proper conduct of Council meetings, dealings with the public, and the roles of Town staff and committees.

This manual should be used in conjunction with the Town Charter, Comprehensive Land Use Plan (Comp Plan), Land Development Code (LDC), Code of Ordinances, and the annual budget as necessary. In the event of a conflict between this document and Florida statutes, Town Charter or other Town guiding documents, such other document shall prevail over the language in the Policies and Procedures manual.

2. Town Council Mission and Job Description

Mission:

To legislate and police the powers of the Town, including establishing boards, commissions and committees; to perform all duties and obligations imposed on the municipality by law; to insure by strategic planning and clear policies that the unique and natural characteristics of the island are preserved; to supervise the Town Manager and Town Attorney; to perform all actions for the welfare of the residents, owners, businesspersons, and guests of the Island in adherence to the Town Charter, State and Federal Law.

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as needed to make changes.
- Review and interpret the Land Development Code and conduct public hearings as needed to make changes.
- Conduct hearings regarding land use matters.
- Introduce and approve Charter Amendments for adoption by referendum.
- Appoint a Town Manager.
- Appoint a Town Attorney.
- Introduce and enact ordinances.

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- Introduce and adopt resolutions.
- Review and adopt the Operations and Capital Improvement budgets.
- Review and approve budget amendments.
- Create Special Assessment Districts as may be needed.
- Establish advisory committees as needed.
- Review and approve inter-local agreements.
- Review and approve contracts with the Town above the threshold limit allowed to Town Manager.
- Elect a Mayor and Vice Mayor.
- Perform any other duties that are lawfully defined by the Charter and Florida statutes.

Council Member Requirements:

- Electronically file a Statement of Financial Interests and Ethics Training (Form 6) on the Florida Commission on Ethics website, every year.
- Complete and file Form 6F – Final Statement of Financial Interest, within 60 days of leaving office.
- Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.

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3. How Town Council Will Operate

Code of Conduct:

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Town Council pledges to adhere to the following CODE OF CONDUCT:

1. Regularly attend all scheduled meetings of the Town Council as well as special or called meetings relevant to the office.
2. Regularly attend all scheduled meetings of outside committees of which they are a member.
3. Prepare for each meeting.
4. Create a positive environment in meetings of Town Council.
5. Maintain an attitude of courtesy and consideration toward colleagues, residents, and staff during all discussions and deliberations.
6. Allow residents, colleagues, and staff sufficient opportunity to present their views within the prescribed rules for conduct of meetings of Town Council.

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7. Avoid the use of abusive, threatening, or intimidating language or gestures directed at colleagues, residents, or staff.
8. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
9. Respect all local, state, and federal laws, rules, and other regulations.
10. [Electronically](#) submit completed financial disclosure forms [via the Florida Commission on Ethics website](#), by the specified deadline.
11. Publicly acknowledge the adopted position when asked about a decision of Town Council.
12. Read the Town Comprehensive Plan and follow its directives in all decision-making processes for the Town.
13. Follow the procedural and substantive requirements of the LDC.

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Code of Ethics:

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Members should ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the residents served by the Town Council and by promoting public confidence in the integrity, independence, ability and impartiality of Town Council.

1. Members shall not convey the impression that they can influence the outcome of a decision of Town Council and shall not attempt to use their office to [direct or](#) influence staff recommendations, [the Town Manager or Town Attorney without the concurrence of the Town Council](#).
2. Members shall discharge their duties and responsibilities without favor, [bias](#) or prejudice toward any person or group. Members should not allow personal or business relationships to impact upon their conduct or decisions in connection with Town Council business and shall not lend their influence towards the advancement of personal interests, [towards the advancement of the interests of friends or business associates or other conflict of interest situations](#).
3. Members shall avoid creating the appearance of impropriety by refraining from engaging in private discussions with an applicant – or their representatives about specific upcoming Town Council quasi-judicial agenda items [unless the ex parte communication is disclosed as required](#). If a member receives a private written, telephonic or electronic communication about an agenda item, the member will promptly forward the information to the Town Manager and the Town Clerk, or to the member's Town e-mail account so that it may be shared with all other members and filed with the Town official records to comply with the Public Records Law requirement. Any private written, telephonic, or electronic communication about an agenda item, must be submitted to the Town Clerk prior to the commencement of the Town Council meeting at which the agenda item is discussed or it cannot be mentioned or read by any member [unless otherwise allowed by majority vote of the Town Council](#).

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4. No member shall communicate, receive, send, or solicit any private written, telephonic, or electronic communication during a Town Council meeting if disruptive to the orderly conduct of the meeting, unless it pertains to an emergency situation (example: audio or video feed of Council meeting not working properly).
5. Members shall refrain from any private discussion of Town Council business, or matters that could come before the Town Council, with other members per the requirements of Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
6. Consistent with Florida law Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during Town Council proceedings. Florida law prohibits the spouse or minor child of that member from soliciting or accepting these as well, and the Member shall be vigilant in ensuring compliance from those family members. Members should contact the Town Attorney or the Florida Commission on Ethics if they have any questions about compliance with Florida law as to gifts.
7. ~~Members shall refrain from participation in any proceeding in which their impartiality may reasonably be questioned.~~ A member whose personal employment or business relationship with a person or entity that is subject to a recommendation of Town Council shall seek the advice and counsel of the Town Attorney, if such relationship could conceivably influence the members' impartiality during Town Council discussion of the subject. The provisions of Chapter 112, Florida Statutes and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determinations.
8. Members shall remain vigilant against deviations from Town Council policies and procedures.

As a legislative and quasi-judicial body, Town Council must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, the Town Charter, Town code and LDC, and apply to legislative and quasi-judicial actions. The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be unreasonable, arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

The other due process prong, procedural due process, requires a fair method of adjudicating the rights of property owners, requiring notice and an opportunity to be heard by an impartial decision maker. In legislative matters, this requirement is derived from Florida Statutes, the Town Code and LDC that provide the type and period of notice depending on the nature of the property interest subject to regulation at a public hearing. Quasi-judicial decisions have an underlying Constitutional requirement for procedural due process.

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Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others. Key overarching principles to keep in mind are that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the Town Council provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

Assignment of a Town Council Representative:

Town Council may choose to assign a member to lead a project or assess an issue. The Town Council Representative, or often called a “Point Person” may be assigned to do fact-finding and/or research, recommend a course of action and report back to Town Council for direction. Final decisions are made by a majority of Town Council.

Sunshine Issues:

Members of Town Council and all Town advisory committees, boards and agencies are subject to the Sunshine Law (F.S. 286.011). This means that any gathering of, or communication between, two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action taken by communication through a spouse or other go-between.

Town Council members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or civic groups regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met. These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor’s backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

Email and Texting Policy:

Email and texting are convenient ways to communicate with staff, Town Council, residents, and others. However, it presents unique legal and ethical challenges. All email and texts regarding Town business must be properly retained as a public record. Furthermore, any email or text regarding an issue that will come before Council in a quasi-judicial hearing must be properly disclosed as an ex-parte communication as appropriate. Council members must be vigilant to not

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accidentally violate Sunshine Law requirements. Emailing or texting anyone stating a position on an issue that will come before Town Council is particularly risky. Email and text actions to avoid include:

1. Sending an email to another Council member with anything that could be construed as a position.
2. Copying another Council member on a response to an email sent by a resident, staff member or other person.
3. If another Town Council member's email is inadvertently forwarded to you, respond to the sender recognizing its accidental nature, the fact that it is a Sunshine issue and retain a copy of your response.
4. [Sending an email "Reply All" when more than one Council member is also on the email that was received.](#)

Florida has a very broad public records law. Most written communications to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email and text communications and email address and mobile phone number may be subject to public disclosure. (This statement must be included in the closing of any email regarding Town business).

Public Records:

It is the policy of the State of Florida that municipal records shall be open for personal inspection by any person (s. 119.01, F.S.). To that end, the Legislature has enacted the Public Records Law (Ch. 119, F.S.), which contains requirements that public records, as defined in s. 119.011, F.S., be made available for public inspection, they be kept in usable condition, they be kept in safe places, they be kept in convenient places, and copying of records be provided at reasonable costs. A public record is "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."

Council members' responsibility is to ensure their own public records are properly handled and preserved, and to see that the law is adhered to by all employees of the Town. The Town Clerk has been assigned the responsibility of being the custodian of public records. Council members must further understand that their public record must be retained even after leaving office.

Any use of personal [electronic equipment or](#) email accounts for government business is allowed, but for a council member's own protection, it is suggested that [a copy of any documents produced is sent](#), to their Town email account for proper retention. Materials prepared for Town Council meetings, hearings, minutes, and workshop will already be managed by the custodian of public records and do not need to be retained by the Council member. If there are any questions on retention of a particular document, consult with the custodian of public records and/or the Town Attorney before destroying.

4. Training Materials and First Meeting

Training Materials:

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The Town Clerk will provide each new member of the Town Council with copies of:

- Town Charter.
- Comprehensive Plan.
- Land Development Code.
- Code of Ordinances.
- Florida Code of Ethics.
- Florida Sunshine and Public Records Laws.
- Emergency Operations Plan.
- Town Council Policies and Procedures Manual.
- Local Planning Agency Policies and Procedures Manual.
- Town Personnel Manual.
- Town Purchasing and Procurement Manual.
- Other materials as determined by the Town Attorney, Town Manager and Town Council members.

As part of a Council member's orientation, they will be provided a tour of the Town facilities with introductions with all staff members. ~~Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.~~

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Training Recommendations:

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- Successful completion of all courses required by the National Incident Management System (NIMS).
- Florida League of Cities, Inc., Institute of Elected Municipal Officials (IEMO) Basic Course.
- Making Good Planning Decisions.
- Hands-on Emergency Operations Training.
- Other courses as determined by the Town Attorney, Town Manager and Town Council members.

Election of Officers:

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At the first meeting after the second Tuesday in November, the Council's Mayor and Vice Mayor will be chosen. Each Council member may nominate a person for each of these positions. A second is not required. The voting procedure will be agreed upon in advance.

Outside Committee Representation:

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Charlotte Harbor National Estuary Program – www.chnep.org

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Meetings: The Policy Committee meets the third Monday every other month at 9:30 am*.
Mission: The CHNEP is a partnership that protects the estuaries and watersheds from Venice to Bonita Springs to Winter Haven. This partnership gives citizens, elected officials, resource managers, and commercial and recreational resource users in the 4,700-square mile study area a voice to address diverse resource management concerns including fish and wildlife habitat loss, water quality and water flow. The watershed in the study area includes all or parts of Lee, Charlotte, Sarasota, Manatee, Polk, Hardee and DeSoto counties.

Coastal Advisory Committee – www.lee-county.com

Meetings: Last Monday of each month at 9:30 am.*
Mission: The Council's charge is to advise the Board of County Commissioners, staff and the various related advisory boards when proceeding with a project affecting beach and shoreline preservation regarding the proper methods in helping to conserve the Beaches of Lee County.

Horizon Council – www.lee-county.com/business

Meetings: First Friday of each month*
Mission: The Horizon Council is the advisory board to the county commission on economic development issues. This unique public-private partnership is made up of 62 members from government, education, business, and community organizations. Established in 1991, the mission of the Horizon Council is to:

- Work toward improving the business environment in Lee County; and
- Retain and encourage the expansion of existing businesses; and
- Attract new and diversified employment to the area

Human Services Council – www.lee-county.com

Meetings: Third Tuesday of each month*
Mission: The Council will ensure the efficient delivery of community health and human services through:

- Communication
- Coordination
- Strategic Planning
- Innovation
- Integration and collaboration
- Measurable Outcomes

Metropolitan Planning Organization – www.mpo-swfl.org

Meetings: Third Friday of each month at 9 am*
Mission: The MPO is responsible for conducting a continuing, cooperative, and comprehensive transportation planning process for all of Lee County. It must plan for the movement of both people and goods within the county by all modes of travel – including highways, public transportation, bicycles, and foot. It also plans for the connections (such as airports, seaports, or bus, railroad, and pipeline terminals) linking these modes or tying us to the rest of the world.

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The MPO sets priorities among surface transportation improvement projects within Lee County for state or federal funding. To be eligible for federal funds, federal law requires that the MPO endorse a transportation improvement program identifying the projects to be done over the next few years.

Southwest Florida Regional Planning Council – www.swfrpc.org

Meetings: Third Thursday of each month at 9 am*

Mission: The Southwest Florida Regional Planning Council is a locally formed regional planning agency serving six counties: Charlotte, Collier, Glades, Hendry, Lee, and Sarasota. Its mission is to protect and improve the region's physical, economic, and social environment. The agency is directed by a thirty-four-member Council composed of local elected officials and gubernatorial appointees. The activities of the Southwest Florida RPC can be classified into three major areas: long range planning, tactical planning, and transportation planning.

Estero Bay Agency on Bay Management – www.swfrpc.org/abm.shtuil

Meetings: Second Monday of each month at 9:30 am*

Mission: Its directive is to make comments and recommendations regarding the management of Estero Bay and its watershed. The ABM collects and maintains data and it reviews and comments to regulatory agencies on issues affecting the watershed

*Meeting times are subject to change.

5. Town Advisory Committees, Boards and Agencies Standing Advisory Committees

Council Selection of Advisory Board, Agency, and Committee Members:

Residency: Except as required by Town Charter, Town Ordinance or Florida statute, residency on Fort Myers Beach will not be a requirement for nomination or election to a committee, commission, or board of the Town.

Advertising: All advisory committees are listed on the Town website. Information included will be the committee mission, current projects, when the committee meets and current members on the committee and whether submission of an annual Form 1 (Financial Disclosure) is required by the Florida Commission on Ethics.

Openings: In the event of an opening for an advisory board or committee, Town staff will list the opening on the website with a date when applications must be submitted to the Town Clerk for consideration by Town Council. Whenever possible, committee selection will be scheduled 30 days after proper notification. Advertising in local newspapers can be considered if approved by the Town Manager. Committee candidates will be encouraged to appear for interviews during the selection process.

Preliminary matters: The Council should decide how to go about voting prior to any voting taking place and decide the number of members on a committee ahead of time.

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Voting:

1. Each Council member makes selections, marking no more than the total number of seats available (or writes the names down), and initials his ballot.
2. Those receiving the most votes are selected to seats available.
3. If there is a tie for any number of seats still left open, there will be a runoff consisting only of the persons who are tied.

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Examples of voting procedure:

First Ballot:

Seats available – 9

Candidates – 15

Votes on First Ballot: Results of First Ballot

3 get 5 votes apiece 3 are elected

3 get 4 votes apiece 3 are elected

4 get 3 votes apiece 4 go on a second ballot

3 get 2 votes apiece 3 are eliminated

2 get 0 votes apiece 2 are eliminated

There would be a second ballot containing only the names of the four candidates who got three votes. Council would vote for three candidates. This process would be repeated in case of a tie until all seats are filled. A variation on this method of voting is that after the first ballot, if there is a tie which prevents all the seats from being filled, the runoff would consist of all the un-selected candidates, not just the ones involved in the tie.

4. The ballots are given to the Town Clerk, who conducts the tallying and announces the results.
5. Once all selections are made, Council adopts a motion containing the new members' names.

Effective Date of Appointment and Follow Up:

Newly appointed advisory board, agency and committee members who are required to file a Financial Disclosure Statement, will be notified of the disclosure requirements no later than the date of appointment. The Town Manager or designee is responsible for such notification. These appointments should be made effective as of some future date, so that there is sufficient time to provide the required notification. For convenience, the notice could be accompanied by a copy of the required disclosure forms, which are available on-line from the Florida Commission on Ethics (<http://www.ethics.state.fl.us/>)

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Ad Hoc Committees:

Town Council has the authority to form ad hoc committees requesting participation by volunteers. Ad hoc Committees can be used at Town Council's discretion to address specialized and or short-term Town issues.

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The mission, specific objectives, expected products, membership and timelines of an ad hoc committee should be clearly stated and agreed to by Town Council. One Town Council member will be an ex-officio member of each ad hoc committee. Where possible, an attempt will be made to have a balanced committee membership. Minutes or verbal reports will keep Town Council informed on a regular basis. A final report will document findings and recommendations and will be presented at a Town Council meeting or workshop.

Ad hoc committees are subject to the public records laws, sunshine laws, quorum, and statutory ethical requirements. It is the Town's responsibility to ensure that each committee member is educated on these issues.

Outline of Committee Orientation Material:

- Meeting Requirements
 - o Notice
 - o Location Requirements, such as ADA compliance
 - o Agendas
 - o Quorum
- Sunshine Requirements
- Public Records Requirements
- Statutory Ethical Requirements

6. Meeting Preparation and Planning

Meeting Schedule:

Regular meetings of Town Council may be found on the website calendar. Management and Planning meetings (M&Ps) are work sessions and are scheduled to discuss financial and other issues before the Town. The need for workshops special meetings, continuances, or rescheduled meetings will be determined by consensus of the Town Council members or the Town Manager and Town Attorney.

Source of Items:

Items for Town Council agendas are generated by requests and/or legislation (ordinances or resolutions) from members of Town Council prepared by the Town Attorney, requests and actions from the Local Planning Agency, continuations from previous council meetings, in addition to anything Council members, the Town Manager or Town Attorney may wish to have included. Some of these inquiries are routine and can be handled by staff because Town Council policy and procedures have been previously approved which apply.

When an item arises that requires Town Council action either to make a decision or to direct staff or the Town Attorney how to proceed it will appear on the agenda identified as a Council member's request or as an item under the Town Manager's section of the agenda which is the "catch all" for miscellaneous items, or Town Attorney's section, as appropriate. For an item to appear on an

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agenda, at least two Council members must agree and shall direct the Town Manager to do so, provided time schedules allow. (Note the agenda preparation timetable below).

Whenever possible, any material written and distributed by Council members as part of the agenda should be included in Council members' packets – allowing ample time for review. This preserves the integrity of the seated Council, conforms to the Florida Public Records law, and lessens the opportunity for misunderstandings and miscommunication. No significant Town staff or Town Attorney time will be spent on an agenda item requested by an individual Council member without advance approval by a majority of the Council. Written requests to be placed on a Council agenda from the public should be submitted directly to the Town Manager. Agenda Management [for future meetings](#) is reviewed at each [Management & Planning Session](#).

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Timetable and Preparation Process:

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A draft agenda will be sent to Town Council for review and comment within 24 hours. The Town Council chair may modify the order of the agenda subject to the approval of the Town Council. Absent an emergency or pressing need, by close of business on the Wednesday prior to the next regular Council meeting, a packet including the finalized agenda and supporting material will be placed in the Council members' mailboxes and placed on the Town website.

The Council members' packets include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.). A sincere effort is made to see that Council packets are complete; if something is not available, a written explanation will be provided. Generally, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

The agenda is posted at Town Hall and on the Town website. Meetings may be announced in local newspapers. Hearing notices will be advertised as required by law and may be provided as a service to local newspapers. Occasionally an item comes up late and may be placed on an amended agenda, or as an "add on" (added too late to be included on the published agenda). Such additions should be an exception [and require a majority vote prior to the approval of the final agenda at the beginning of the meeting](#).

Continued Hearings and Legislative Issues:

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It is the goal of the Town Council to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any Town Council member who missed the initial hearing should attempt to review the DVD prior to participating in the continued hearing or legislative discussion and resolution. If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the Town Council shall consult with the Town Manager and the Town Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director's discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

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Attendance Policy:

The Charter states “A member of Council may forfeit the office, if the member: (d) Misses three consecutive regularly scheduled council meetings without an excused absence.” This statement recognizes that because of the significant meeting preparation required by staff, applicants, and other supporting personnel, it is important that a quorum of the Town Council members be present for all noticed meetings. The Town Manager should be notified of a planned Council member’s absence as soon as known. The Town Manager or designee will notify the Town Attorney and Mayor. It is important that the Town Council know that it will have a quorum of its members prior to notification of a meeting/hearing. Work session attendance is equally important since that is often when information is shared, and issues resolved before putting the item on an agenda of a regular meeting for a vote.

Participation by Videoconference:

A Council member may participate in a Town Council meeting via videoconference if one of the following conditions is met:

1. Permission is granted from the Council for an “extraordinary circumstance”, including but not limited to a medical situation, unexpected travel delay, transportation issue, etc. or.
2. An emergency order or executive order authorizes the use of communications media technology, as provided in s. 120.54(5)(b)2, F.S.

A quorum of Town Council members must be met without the missing Council member(s) in attendance unless this requirement is suspended by emergency order or executive order.

7. Meeting Procedures

Generally, the Order of Agenda Items:

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Approval of Final Agenda
5. Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).
6. Local Achievements and Recognitions
7. Advisory Committee Items / Reports / Appointments
8. Approval of Minutes
9. Consent Agenda
10. Items Removed from Consent Agenda
11. Proclamations, Recognitions and Awards

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~~Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).~~

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~~12. Approval of Minutes~~

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~~13. Consent Agenda~~

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~~14. Advisory Committee Items and Reports~~

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~~11. Public Hearings of proposed ordinances (At conclusion of hearing, requires motion and roll call vote)~~

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~~12. Administrative Agenda~~

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- a. Introduction of proposed ordinances (Requires a motion and a majority vote for scheduling the hearing).
- b. Resolutions (Requires a motion and vote for passage)
- c. Unfinished business (Items from previous agendas scheduled by Town Manager – should be listed separately on the agenda)

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~~15. New business (Scheduled by the Town Manager, should be listed separately)~~

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~~13. Final Public Comment (not limited to agenda items)~~

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~~14. Town Manager's Items and Reports~~

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~~15. Town Attorney's Items and Reports~~

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~~16. Council Members Items and Reports~~

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~~17. Agenda Management (generally addressed during Council work sessions)~~

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- a. ~~Topics for upcoming regularly scheduled meetings~~
- b. ~~Planning and scheduling of Management and Planning, and other work sessions~~

~~18. Review New Actions from Meeting~~

~~17. Adjournment (Requires a motion and vote – no second is required. It is a privileged motion allowing no discussion before vote)~~

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Conduct of Council Meetings:

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- The Mayor will conduct Council meetings, and in the Mayor's absence the Vice Mayor will do so.
- The Town Clerk shall deliver a nondenominational invocation.
- Robert's Rules of Order shall be the reference for parliamentary procedure governing the conduct of Town Council meetings when not in conflict with the Town Charter, Town Ordinances, Florida Statutes or these Policies and Procedures. It is not intended that Council meetings be unnecessarily formalistic, but rather that parliamentary procedure will be invoked only when necessary to facilitate the business of the meeting.
- All participants and audiences at Town Council meetings are expected to exhibit common courtesy and proper decorum. No personal attacks will be tolerated. The Chair may

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request that someone who is being disruptive be removed from chambers [after providing the individual with notice that the continuation of the disruption will result in removal](#).

- Individuals wishing to speak during the Public Comment times are requested to (1) fill out an index card (available in the meeting room) indicating their name and the topic they will address and (2) give that card to the Clerk prior to the start of the meeting. When recognized by the Chair, the speakers will advance to the podium and state their name for the public record.
- Public Comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by vote of the Council. The Public Comment times are intended as opportunities for interested parties to present their viewpoints to the Council members. They are not intended as question-and-answer sessions or as dialog with the Council. Response to questions and/or clarifications requested during public comment may, with the approval of Town Council, be answered immediately if there is a straight-forward, short answer, directed to the appropriate person for response at a later time or placed on an agenda for a future Council meeting.
- After a proper motion and second, discussion by the Council members shall be limited to agenda items with expression of ideas, facts, and conclusions. No member will speak twice on the item until all others who want to speak have spoken.
- The discussion by Council members is intended as an opportunity for Council members to share their viewpoints with each other. Since this opportunity does not exist outside of Council meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Town Manager or Town Attorney, which could be obtained outside of the Council meeting. While there is no time limit or censorship on comments, Council members should take into consideration the total time available in the meeting for the published agenda and the time allocated for the specific item in the agenda.

Any Council member may present resolutions [related to celebrations or in support of causes for the benefit of the Town, which must be previously reviewed for form and sufficiency by the](#) Town Attorney and [subject to, a vote by the Town Council](#).

Rules of Civility:

The Town of Fort Myers Beach Town Council recognizes that public discourse is essential to the democratic system of government. It also embraces civility in public deliberations. Rules for Council discussion and public participation while conducting meetings and workshops are as follows:

1. Speakers are permitted to deliver his or her comments without interruption, absent inappropriate language, conduct or personal attacks.
2. Speakers and debates should focus on issues, not on persons or personalities.
3. Persons are encouraged to participate in the governmental process.
4. To allow time to hear all points of view, speakers are allotted 3 minutes.

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5. Sidebar discussions while others are speaking are discouraged in Council Chambers. These discussions are to be removed from the chambers so as not to be disruptive to those conducting and following Council business.
6. Only the speaker recognized by the Chairperson has the floor. Speakers should identify themselves for the record. Speakers should utilize the microphone so that their comments can be recorded.
7. We seek to understand one another's points of view.
8. Anger, rudeness, ridicule, impatience, and lack of respect for others are not acceptable behavior. Demonstrations in support or opposition to a speaker or idea such as clapping, cheering, booing, or hissing or intimidating body language are not permitted in Council Chambers or workshop facilities.
9. We should all take initiative to make things better. Our goal is to foster an environment which encourages a fair discussion and exchange of ideas without fear of personal attacks.
10. No use of profanity will be tolerated.
11. Any email or other digital or internet platform used to communicate with the Town Council, individual members of the Town Council, Town Manager, Town Attorney, or Town staff that contain personal attacks, offensive language or slurs; that are belligerent, sarcastic, accusatory or unsigned shall be deemed [by the Town Council as](#) non-compliant with these "Rules of Civility." Such communications place absolutely no obligation upon Town Council Members, the Town Manager, the Town Attorney or Town staff to respond.

Minutes:

Notes will be taken of all meetings and work sessions. The notes are then transcribed into summary minutes that become the written record of subjects discussed, conclusions reached, actions taken, and assignments given. The minutes include the names of all those participating in the meeting including Council members, staff, the Town Attorney, applicants, their attorneys and witnesses, and people who offer public comments. The minutes also serve as a record of motions and votes on all Council decisions.

Once completed, the minutes are provided to Council members for approval at their next meeting. The approval of the minutes is intended for Council members to accurately document the proceedings of the Town Council. Before moving approval, the minutes should be amended, if necessary, to portray more accurately what occurred at a Council meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what was done. Once approved by Council, the original is filed in a secure file and a copy is placed on the Town's web page.

Video and/or audio recordings when made are available at the request of the public or anyone who wishes to listen to the meeting or a portion of the meeting. The original video and audio recordings are stored in a secured area for safekeeping. Any request for production of a verbatim transcript, in whole or in part, of any meeting, workshop or other function of the Town Council or any Town committee thereof by [a member of the public shall be paid for by the member of the public. Any](#)

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need for a verbatim transcript requested by Town staff, shall require prior consent of payment by the Town Council, except when, such requests are required by a court of competent jurisdiction or quasi-judicial officer in the proper exercise of its powers. Video and audio recordings are only the legal record in the absence of approved minutes.

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Council Members Items and Reports:

Items and Reports time is set aside for Council Members to report on activities of interest to fellow members, staff, and the public. Council Members are encouraged to send as much information as possible prior to the meeting. Unless an issue is time sensitive, the item will be placed on a future agenda if a vote is required.

Agenda Management:

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The Town Manager is responsible for compiling and distributing a schedule of future meetings and work sessions.

Action List:

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The Town Manager is responsible for compiling and distributing a list of action items that includes a short status and expected date of completion.

How Voting Order is Established for Roll Call Votes:

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The voting order for calling the roll-on Town Council votes shall be conducted at the direction of the Town Clerk. Votes on ordinances require a roll call vote; any Council member may call for a roll call vote on any motion before the Council.

Voting Conflicts:

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Florida Statute has very specific rules regarding voting conflicts. If a Town Council member has a voting conflict, he/she must publicly disclose that conflict at the latest at the beginning of the discussion of the subject at the meeting. A Town Council member is permitted to participate in the discussion but cannot vote on the subject. The specific rules are set out in s. 112.3143(3)(a), F.S. as amended, quoted below:

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“(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the

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memorandum in the minutes.”

NOTE: s. 112.3143(b) F.S. defines “relative” as follows: “any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. Also, Section 112.3143(4) prohibits participation by an appointed (as opposed to an elected) official in the event of a voting conflict of interest.

Guidelines for Legislative Hearing Procedures:

1. The Chair opens the hearing.
2. Staff presents Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable and a copy of the business impact estimate when applicable, which shall be maintained by Town staff with the hearing’s resulting ordinance or resolution as required.
3. The Chair or Town Attorney reads the ordinance or resolution title.
4. Staff and/or the Town Attorney present(s) a brief overview of the ordinance or resolution.
5. Public input is taken.
6. Public input is closed
7. Town Council members ask questions, if any, of staff/Town Attorney
8. Town Council members discuss ordinance or resolution, including changes, deletions, etc.
9. A motion is made and seconded to either approve, the ordinance or resolution as is, or with modifications, or to take some other action.
10. The motion is discussed and voted upon, with roll call voting as appropriate. Upon consideration and passage of all appropriate motions, the Chair declares the hearing on the ordinance or resolution to be concluded, continued, tabled, or other action in conformity with the motion.
11. If an ordinance is approved, the Town Council shall schedule a second reading of the ordinance for adoption.

Notes: There is no ex parte disclosure for legislative hearings.
Members of the public are not sworn in.

The above is intended as a guide and the Council may conduct the legislative hearing utilizing another procedure, so long as due process requirements are met.

Guidelines for Quasi-Judicial Land Use Hearing:

1. The Chair opens the hearing.
2. Staff present Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable, which shall be kept by Town staff with the hearing’s resulting resolution or Order.
3. The Chair asks if any Council member has a conflict of interest or has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert

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opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record. See section 34-52 of the Land Development Code.

4. All witnesses are sworn in. This includes Town staff, applicant and applicant's representatives, and anyone who wishes to make public sworn testimony on this case. All persons are requested to state their name for the record when they address the Council and if presenting testimony as an expert, shall state their qualifications and area of expertise. Town Council shall vote to accept or reject the testimony as expert testimony. No statement of qualifications or additional vote is needed if the individual has been previously accepted as an expert in a particular area and this is stated in the record.
5. The applicant presents its case, including any testimony by its experts or others in support of the applicant's request. Town Council may ask clarification questions of the applicant and others giving testimony in support of the applicant's request. *
6. Town staff presents its report and recommendation. Town Council may ask for clarification or questions of staff. *
7. Local Planning Agency representative, if available, presents LPA recommendation. Town Council may ask clarification questions of the LPA representative.
8. Public sworn testimony is opened. At its conclusion, the Chair closes the public sworn testimony portion of the hearing.
9. Applicant presents rebuttal, if any. Town Council may ask detailed informational questions of applicant. **
10. Staff presents rebuttal, if any. Town Council may ask detailed informational questions of staff. **
11. The testimony portion of the hearing is closed, and Council discussion starts.
12. Council next votes on a resolution or Order, or takes other action if approval by ordinance is required.
13. Thereafter the hearing is closed or continued, or other action is taken in conformity with the successful motion, and the time of closure is verbally noted for the record.

*Council has determined that these Council questions are to clarify the applicant's and staff's presentations of information and are intended to be short Qs and As.

**Council has determined that these Council questions are to discuss detailed, substantive matters involving the application.

NOTE: The above is intended as a guide and the Council may conduct the quasi-judicial hearing utilizing another procedure, so long as due process requirements are met.

If new evidence is submitted prior to or at a Town Council hearing for a quasi-judicial matter after the final LPA hearing, Town Council can choose to:

1. Send the matter back to the LPA for review and recommendation.

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2. To continue the hearing to provide sufficient time for the staff and Town Attorney to make recommendations; or
3. To complete the hearing if agreeable to the staff and Town Attorney.

8. Reimbursement Procedures

Travel Expenses:

It is the desire of the Town of Fort Myers Beach that Town Council members be reimbursed for certain expenses incurred while traveling on Town business. Appropriate allowances, forms and procedures are documented in the Town Personnel Manual.

Business Expenses:

From time to time, it may be necessary for members of Town Council to entertain various Federal, State and County officials while transacting official Town business. Such business expenses would normally include lunches and/or dinners. A Direct Expense Voucher may be submitted for reimbursement and must be signed by the person requesting reimbursement, and the Town Manager. Invoices must be attached as supporting documentary evidence.

Educational Reimbursement:

The Educational Reimbursement Program is used to encourage Town Council members to improve their knowledge and skills needed for the Town's effectiveness. Reimbursement conditions, forms and procedures are documented in the Town Personnel Manual.

9. Council Communications Policy and Processing Procedures

Council Communications Policy:

Any communication by individual Council members to the media, other governmental agencies, or in public forums should, as clearly as possible, distinguish between personal opinions and actions or direction taken by Town Council. This policy in no way means to censor viewpoints or restrict individual rights but is solely suggested to preserve the integrity of the Council, staff, and the Town.

Mail Processing Procedures:

Mail for the Town should be addressed to the current address. All mail is opened stamped and distributed (it is all public record). Council mail is given to the Administrative Assistant to log and process. Any Council mail that needs a prompt or detailed answer is pulled, copied, and a draft response is prepared for review, usually by the Mayor. The original is distributed, along with other mail, with a note stating a draft response is being prepared. When the response is finalized, it is copied and distributed to all Council members for reading at their leisure.

Communications with Potential Applicants for Zoning and Communications with Vendors

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or Service Providers:

Section 34-52 of the LDC specifies regulations regarding communications with public officials in non-quasi-judicial matters and ex parte communications with public officials in quasi-judicial matters.

10. Non-Discrimination and Harassment

Policies:

These policies are documented in the Town Personnel Manual

Interview/Selection Process for Legal Services

The Town Council shall competitively procure Legal Services (Town Attorney) candidates in accordance with the Town's adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Legal Services candidates. The Town Council may direct the Town Manager or designee to review the proposals submitted by the applicants for Legal Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

INTERVIEW PROCESS FOR LEGAL SERVICES

Individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP#: _____ Interview date: _____

	9:00-9:30 (Public Gathering)	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1	Coffee/muffins	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2	Coffee/muffins	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3	_____	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4	_____	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5	_____	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant 1: _____
Applicant 2: _____
Applicant 3: _____
Applicant 4: _____
Applicant 5: _____

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NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with 1 being the top choice. The Town Clerk will tally the votes and announce each applicant's combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of only the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period of legal services, if necessary, is discussed including assignment of representation for ongoing municipal litigation cases.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

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TOWN COUNCIL RANKING SHEET FOR LEGAL SERVICES

RFP# _____

DATE: _____

Councilor Name:

Councilor Signature:

Ranking (#1 is top choice)

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

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Interview/Selection Process for Town Manager

The Town Council shall competitively procure Town Manager candidates in accordance with the Town's adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Manager candidates. The Town Council may direct the ~~acting then current Town Manager~~ or designee to review the proposals submitted by the applicants for Town Manger Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

INTERVIEW PROCESS FOR TOWN MANAGER

Councilors rank top 5 candidates from applications. Top 5 overall are invited and scheduled for individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP# _____ Interview date: _____

	9:00-9:30 Public Gathering	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1	Coffee/muffins	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2	Coffee/muffins	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3	Coffee/muffins	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4	Coffee/muffins	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5	Coffee/muffins	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant

1: _____

Applicant

2: _____

Applicant

3: _____

Applicant

4: _____

Applicant

5: _____

NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

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TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with 1 being the top choice. The Town Clerk will tally the votes and announce each applicant's combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of only the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period, if necessary, is discussed.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

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TOWN COUNCIL RANKING SHEET FOR TOWN MANAGER

RFP# _____

DATE: _____

Councilor Name: _____

Councilor Signature: _____

Ranking (#1 is top choice)

1. _____
2. _____
3. _____
4. _____
5. _____

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RESOLUTION NUMBER 23-182

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town Council has adopted a Policies and Procedures Manual to standardize the way the Town Council conducts its meetings, acts on items before it and adopts, amends, and implements legislative and policy decisions; and

WHEREAS, the Town Council desires to amend and update the Town Council Policies and Procedures Manual previously approved by Resolution 23-30.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

Section 2. The amended Town Council Policies and Procedures Manual, attached as Exhibit "A" is approved.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of January 2024..

EXHIBIT “A”

**Town of Fort Myers Beach Town Council
Policies and Procedures Manual
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1. Introduction

This Town Council Policies and Procedures Manual is for the purpose of helping the Council Members in the discharge of their duties. They are intended to be guidelines, not “rules” on how to conduct business. Town Council may vary from these policies and procedures on a case-by-case basis by a majority vote unless in conflict with Florida law, the Town Charter, the Land Development Code, Code of Ordinances, Comprehensive Plan or other Town guiding documents. As the Town Council continues to discover situations that are unique to Fort Myers Beach, it will want to update and amend this manual. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of Council will find in one handy reference, answers to policy and procedure questions that come up from time to time. By having an agreed-upon guide, members of Council also may develop common expectations on proper conduct of Council meetings, dealings with the public, and the roles of Town staff and committees.

This manual should be used in conjunction with the Town Charter, Comprehensive Land Use Plan (Comp Plan), Land Development Code (LDC), Code of Ordinances, and the annual budget as necessary. In the event of a conflict between this document and Florida statutes, Town Charter or other Town guiding documents, such other document shall prevail over the language in the Policies and Procedures manual.

2. Town Council Mission and Job Description

Mission:

To legislate and police the powers of the Town, including establishing boards, commissions and committees; to perform all duties and obligations imposed on the municipality by law; to insure by strategic planning and clear policies that the unique and natural characteristics of the island are preserved; to supervise the Town Manager and Town Attorney; to perform all actions for the welfare of the residents, owners, businesspersons, and guests of the Island in adherence to the Town Charter, State and Federal Law.

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as needed to make changes.
- Review and interpret the Land Development Code and conduct public hearings as needed to make changes.
- Conduct hearings regarding land use matters.
- Introduce and approve Charter Amendments for adoption by referendum.
- Appoint a Town Manager.
- Appoint a Town Attorney.
- Introduce and enact ordinances.

- Introduce and adopt resolutions.
- Review and adopt the Operations and Capital Improvement budgets.
- Review and approve budget amendments.
- Create Special Assessment Districts as may be needed.
- Establish advisory committees as needed.
- Review and approve inter-local agreements.
- Review and approve contracts with the Town above the threshold limit allowed to Town Manager.
- Elect a Mayor and Vice Mayor.
- Perform any other duties that are lawfully defined by the Charter and Florida statutes.

Council Member Requirements:

- Electronically file a Statement of Financial Interests and Ethics Training (Form 6) on the Florida Commission on Ethics website every year.
- Complete and file Form 6F – Final Statement of Financial Interest, within 60 days of leaving office.
- Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.

3. How Town Council Will Operate

Code of Conduct:

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Town Council pledges to adhere to the following CODE OF CONDUCT:

1. Regularly attend all scheduled meetings of the Town Council as well as special or called meetings relevant to the office.
2. Regularly attend all scheduled meetings of outside committees of which they are a member.
3. Prepare for each meeting.
4. Create a positive environment in meetings of Town Council.
5. Maintain an attitude of courtesy and consideration toward colleagues, residents, and staff during all discussions and deliberations.
6. Allow residents, colleagues, and staff sufficient opportunity to present their views within the prescribed rules for conduct of meetings of Town Council.

7. Avoid the use of abusive, threatening, or intimidating language or gestures directed at colleagues, residents, or staff.
8. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
9. Respect all local, state, and federal laws, rules, and other regulations.
10. Electronically submit completed financial disclosure forms via the Florida Commission on Ethics website by the specified deadline.
11. Publicly acknowledge the adopted position when asked about a decision of Town Council.
12. Read the Town Comprehensive Plan and follow its directives in all decision-making processes for the Town.
13. Follow the procedural and substantive requirements of the LDC.

Code of Ethics:

Members should ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the residents served by the Town Council and by promoting public confidence in the integrity, independence, ability and impartiality of Town Council.

1. Members shall not convey the impression that they can influence the outcome of a decision of Town Council and shall not attempt to use their office to direct or influence staff recommendations, the Town Manager or Town Attorney without the concurrence of the Town Council.
2. Members shall discharge their duties and responsibilities without favor, bias or prejudice toward any person or group. Members should not allow personal or business relationships to impact upon their conduct or decisions in connection with Town Council business and shall not lend their influence towards the advancement of personal interests, towards the advancement of the interests of friends or business associates or other conflict of interest situations.
3. Members shall avoid creating the appearance of impropriety by refraining from engaging in private discussions with an applicant – or their representatives about specific upcoming Town Council quasi-judicial agenda items unless the ex parte communication is disclosed as required. If a member receives a private written, telephonic or electronic communication about an agenda item, the member will promptly forward the information to the Town Manager and the Town Clerk, or to the member's Town e-mail account so that it may be shared with all other members and filed with the Town official records to comply with the Public Records Law requirement. Any private written, telephonic, or electronic communication about an agenda item, must be submitted to the Town Clerk prior to the commencement of the Town Council meeting at which the agenda item is discussed or it cannot be mentioned or read by any member unless otherwise allowed by majority vote of the Town Council.

4. No member shall communicate, receive, send, or solicit any private written, telephonic, or electronic communication during a Town Council **meeting if disruptive to the orderly conduct of the meeting**, unless it pertains to an emergency situation (example: audio or video feed of Council meeting not working properly).
5. Members shall refrain from any private discussion of Town Council business, or matters that could come before the Town Council, with other members per the requirements of Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
6. **Consistent with Florida law**, Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during Town Council proceedings. Florida law prohibits the spouse or minor child of that member from soliciting or accepting these as well, and the Member shall be vigilant in ensuring compliance from those family members. Members should contact the Town Attorney or the Florida Commission on Ethics if they have any questions about compliance with Florida law as to gifts.
7. ~~Members shall refrain from participation in any proceeding in which their impartiality may reasonably be questioned.~~ A member whose personal employment or business relationship with a person or entity that is subject to a recommendation of Town Council shall seek the advice and counsel of the Town Attorney, if such relationship could conceivably influence the members' impartiality during Town Council discussion of the subject. The provisions of Chapter 112, Florida Statutes and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determinations.
8. Members shall remain vigilant against deviations from Town Council policies and procedures.

As a legislative and quasi-judicial body, Town Council must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, the Town Charter, Town code and LDC, and apply to legislative and quasi-judicial actions. The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be unreasonable, arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

The other due process prong, procedural due process, requires a fair method of adjudicating the rights of property owners, requiring notice and an opportunity to be heard by an impartial decision maker. In legislative matters, this requirement is derived from Florida Statutes, the Town Code and LDC that provide the type and period of notice depending on the nature of the property interest subject to regulation at a public hearing. Quasi-judicial decisions have an underlying Constitutional requirement for procedural due process.

Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others. Key overarching principles to keep in mind are that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the Town Council provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

Assignment of a Town Council Representative:

Town Council may choose to assign a member to lead a project or assess an issue. The Town Council Representative, or often called a “Point Person” may be assigned to do fact-finding and/or research, recommend a course of action and report back to Town Council for direction. Final decisions are made by a majority of Town Council.

Sunshine Issues:

Members of Town Council and all Town advisory committees, boards and agencies are subject to the Sunshine Law (F.S. 286.011). This means that any gathering of, or communication between, two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action taken by communication through a spouse or other go-between.

Town Council members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or civic groups regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met. These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor’s backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

Email and Texting Policy:

Email and texting are convenient ways to communicate with staff, Town Council, residents, and others. However, it presents unique legal and ethical challenges. All email and texts regarding Town business must be properly retained as a public record. Furthermore, any email or text regarding an issue that will come before Council in a quasi-judicial hearing must be properly

disclosed as an ex-parte communication as appropriate. Council members must be vigilant to not accidentally violate Sunshine Law requirements. Emailing or texting anyone stating a position on an issue that will come before Town Council is particularly risky. Email and text actions to avoid include:

1. Sending an email to another Council member with anything that could be construed as a position.
2. Copying another Council member on a response to an email sent by a resident, staff member or other person.
3. If another Town Council member's email is inadvertently forwarded to you, respond to the sender recognizing its accidental nature, the fact that it is a Sunshine issue and retain a copy of your response.
4. Sending an email "Reply All" when more than one Council member is also on the email that was received.

Florida has a very broad public records law. Most written communications to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email and text communications and email address and mobile phone number may be subject to public disclosure. (This statement must be included in the closing of any email regarding Town business).

Public Records:

It is the policy of the State of Florida that municipal records shall be open for personal inspection by any person (s. 119.01, F.S.). To that end, the Legislature has enacted the Public Records Law (Ch. 119, F.S.), which contains requirements that public records, as defined in s. 119.011, F.S., be made available for public inspection, they be kept in usable condition, they be kept in safe places, they be kept in convenient places, and copying of records be provided at reasonable costs. A public record is "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."

Council members' responsibility is to ensure their own public records are properly handled and preserved, and to see that the law is adhered to by all employees of the Town. The Town Clerk has been assigned the responsibility of being the custodian of public records. Council members must further understand that their public record must be retained even after leaving office.

Any use of personal electronic equipment or email accounts for government business is allowed, but for a council member's own protection, it is suggested that a copy of any documents produced is sent to their Town email account for proper retention. Materials prepared for Town Council meetings, hearings, minutes, and workshop will already be managed by the custodian of public records and do not need to be retained by the Council member. If there are any questions on retention of a particular document, consult with the custodian of public records and/or the Town Attorney before destroying.

4. Training Materials and First Meeting

Training Materials:

The Town Clerk will provide each new member of the Town Council with copies of:

- Town Charter.
- Comprehensive Plan.
- Land Development Code.
- Code of Ordinances.
- Florida Code of Ethics.
- Florida Sunshine and Public Records Laws.
- Emergency Operations Plan.
- Town Council Policies and Procedures Manual.
- Local Planning Agency Policies and Procedures Manual.
- Town Personnel Manual.
- Town Purchasing and Procurement Manual.
- Other materials as determined by the Town Attorney, Town Manager and Town Council members.

As part of a Council member's orientation, they will be provided a tour of the Town facilities with introductions with all staff members. ~~Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.~~

Training Recommendations:

- Successful completion of all courses required by the National Incident Management System (NIMS).
- Florida League of Cities, Inc., Institute of Elected Municipal Officials (IEMO) Basic Course.
- Making Good Planning Decisions.
- Hands-on Emergency Operations Training.
- Other courses as determined by the Town Attorney, Town Manager and Town Council members.

Election of Officers:

At the first meeting after the second Tuesday in November, the Council's Mayor and Vice Mayor will be chosen. Each Council member may nominate a person for each of these positions. A second is not required. The voting procedure will be agreed upon in advance.

Outside Committee Representation:

Charlotte Harbor National Estuary Program – www.chnep.org

Meetings: The Policy Committee meets the third Monday every other month at 9:30 am*.
Mission: The CHNEP is a partnership that protects the estuaries and watersheds from Venice to Bonita Springs to Winter Haven. This partnership gives citizens, elected officials, resource managers, and commercial and recreational resource users in the 4,700-square mile study area a voice to address diverse resource management concerns including fish and wildlife habitat loss, water quality and water flow. The watershed in the study area includes all or parts of Lee, Charlotte, Sarasota, Manatee, Polk, Hardee and DeSoto counties.

Coastal Advisory Committee – www.lee-county.com

Meetings: Last Monday of each month at 9:30 am.*
Mission: The Council's charge is to advise the Board of County Commissioners, staff and the various related advisory boards when proceeding with a project affecting beach and shoreline preservation regarding the proper methods in helping to conserve the Beaches of Lee County.

Horizon Council – www.lee-county.com/business

Meetings: First Friday of each month*
Mission: The Horizon Council is the advisory board to the county commission on economic development issues. This unique public-private partnership is made up of 62 members from government, education, business, and community organizations. Established in 1991, the mission of the Horizon Council is to:

- Work toward improving the business environment in Lee County; and
- Retain and encourage the expansion of existing businesses; and
- Attract new and diversified employment to the area

Human Services Council – www.lee-county.com

Meetings: Third Tuesday of each month*
Mission: The Council will ensure the efficient delivery of community health and human services through:

- Communication
- Coordination
- Strategic Planning
- Innovation
- Integration and collaboration
- Measurable Outcomes

Metropolitan Planning Organization – www.mpo-swfl.org

Meetings: Third Friday of each month at 9 am*
Mission: The MPO is responsible for conducting a continuing, cooperative, and comprehensive transportation planning process for all of Lee County. It must plan for the movement of both people and goods within the county by all modes of travel – including highways, public transportation, bicycles, and foot. It also plans for the connections (such as airports, seaports, or bus, railroad, and pipeline terminals)

linking these modes or tying us to the rest of the world.

The MPO sets priorities among surface transportation improvement projects within Lee County for state or federal funding. To be eligible for federal funds, federal law requires that the MPO endorse a transportation improvement program identifying the projects to be done over the next few years.

Southwest Florida Regional Planning Council – www.swfrpc.org

Meetings: Third Thursday of each month at 9 am*

Mission: The Southwest Florida Regional Planning Council is a locally formed regional planning agency serving six counties: Charlotte, Collier, Glades, Hendry, Lee, and Sarasota. Its mission is to protect and improve the region's physical, economic, and social environment. The agency is directed by a thirty-four-member Council composed of local elected officials and gubernatorial appointees. The activities of the Southwest Florida RPC can be classified into three major areas: long range planning, tactical planning, and transportation planning.

Estero Bay Agency on Bay Management – www.swfrpc.org/abm.shtuil

Meetings: Second Monday of each month at 9:30 am*

Mission: Its directive is to make comments and recommendations regarding the management of Estero Bay and its watershed. The ABM collects and maintains data and it reviews and comments to regulatory agencies on issues affecting the watershed

*Meeting times are subject to change.

5. Town Advisory Committees, Boards and Agencies Standing Advisory Committees

Council Selection of Advisory Board, Agency, and Committee Members:

Residency: Except as required by Town Charter, Town Ordinance or Florida statute, residency on Fort Myers Beach will not be a requirement for nomination or election to a committee, commission, or board of the Town.

Advertising: All advisory committees are listed on the Town website. Information included will be the committee mission, current projects, when the committee meets and current members on the committee and whether submission of an annual Form 1 (Financial Disclosure) is required by the Florida Commission on Ethics.

Openings: In the event of an opening for an advisory board or committee, Town staff will list the opening on the website with a date when applications must be submitted to the Town Clerk for consideration by Town Council. Whenever possible, committee selection will be scheduled 30 days after proper notification. Advertising in local newspapers can be considered if approved by the Town Manager. Committee candidates will be encouraged to appear for interviews during the selection process.

Preliminary matters: The Council should decide how to go about voting prior to any voting taking place and decide the number of members on a committee ahead of time.

Voting:

1. Each Council member makes selections, marking no more than the total number of seats available (or writes the names down), and initials his ballot.
2. Those receiving the most votes are selected to seats available.
3. If there is a tie for any number of seats still left open, there will be a runoff consisting only of the persons who are tied.

Examples of voting procedure:

First Ballot:

Seats available – 9

Candidates – 15

Votes on First Ballot: Results of First Ballot

- 3 get 5 votes apiece 3 are elected
- 3 get 4 votes apiece 3 are elected
- 4 get 3 votes apiece 4 go on a second ballot
- 3 get 2 votes apiece 3 are eliminated
- 2 get 0 votes apiece 2 are eliminated

There would be a second ballot containing only the names of the four candidates who got three votes. Council would vote for three candidates. This process would be repeated in case of a tie until all seats are filled. A variation on this method of voting is that after the first ballot, if there is a tie which prevents all the seats from being filled, the runoff would consist of all the un-selected candidates, not just the ones involved in the tie.

4. The ballots are given to the Town Clerk, who conducts the tallying and announces the results.
5. Once all selections are made, Council adopts a motion containing the new members' names.

Effective Date of Appointment and Follow Up:

Newly appointed advisory board, agency and committee members who are required to file a Financial Disclosure Statement, will be notified of the disclosure requirements no later than the date of appointment. The Town Manager or designee is responsible for such notification. These appointments should be made effective as of some future date, so that there is sufficient time to provide the required notification. For convenience, the notice could be accompanied by a copy of the required disclosure forms, which are available on-line from the Florida Commission on Ethics (<http://www.ethics.state.fl.us/>)

Ad Hoc Committees:

Town Council has the authority to form ad hoc committees requesting participation by volunteers. Ad hoc Committees can be used at Town Council's discretion to address specialized and or short-

term Town issues.

The mission, specific objectives, expected products, membership and timelines of an ad hoc committee should be clearly stated and agreed to by Town Council. One Town Council member will be an ex-officio member of each ad hoc committee. Where possible, an attempt will be made to have a balanced committee membership. Minutes or verbal reports will keep Town Council informed on a regular basis. A final report will document findings and recommendations and will be presented at a Town Council meeting or workshop.

Ad hoc committees are subject to the public records laws, sunshine laws, quorum, and statutory ethical requirements. It is the Town's responsibility to ensure that each committee member is educated on these issues.

Outline of Committee Orientation Material:

- Meeting Requirements
 - Notice
 - Location Requirements, such as ADA compliance
 - Agendas
 - Quorum
- Sunshine Requirements
- Public Records Requirements
- Statutory Ethical Requirements

6. Meeting Preparation and Planning

Meeting Schedule:

Regular meetings of Town Council may be found on the website calendar. Management and Planning meetings (M&Ps) are work sessions and are scheduled to discuss financial and other issues before the Town. The need for workshops special meetings, continuances, or rescheduled meetings will be determined by consensus of the Town Council members or the Town Manager and Town Attorney.

Source of Items:

Items for Town Council agendas are generated by requests and/or legislation (ordinances or resolutions) from members of Town Council prepared by the Town Attorney, requests and actions from the Local Planning Agency, continuations from previous council meetings, in addition to anything Council members, the Town Manager or Town Attorney may wish to have included. Some of these inquiries are routine and can be handled by staff because Town Council policy and procedures have been previously approved which apply.

When an item arises that requires Town Council action either to make a decision or to direct staff or the Town Attorney how to proceed it will appear on the agenda identified as a Council member's request or as an item under the Town Manager's section of the agenda which is the "catch all" for

miscellaneous items, or Town Attorney's section, as appropriate. For an item to appear on an agenda, at least two Council members must agree and shall direct the Town Manager to do so, provided time schedules allow. (Note the agenda preparation timetable below).

Whenever possible, any material written and distributed by Council members as part of the agenda should be included in Council members' packets – allowing ample time for review. This preserves the integrity of the seated Council, conforms to the Florida Public Records law, and lessens the opportunity for misunderstandings and miscommunication. No significant Town staff or Town Attorney time will be spent on an agenda item requested by an individual Council member without advance approval by a majority of the Council. Written requests to be placed on a Council agenda from the public should be submitted directly to the Town Manager. Agenda Management for future meetings is reviewed at each Management & Planning Session.

Timetable and Preparation Process:

A draft agenda will be sent to Town Council for review and comment within 24 hours. The Town Council chair may modify the order of the agenda subject to the approval of the Town Council. Absent an emergency or pressing need, by close of business on the Wednesday prior to the next regular Council meeting, a packet including the finalized agenda and supporting material will be placed in the Council members' mailboxes and placed on the Town website.

The Council members' packets include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.). A sincere effort is made to see that Council packets are complete; if something is not available, a written explanation will be provided. Generally, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

The agenda is posted at Town Hall and on the Town website. Meetings may be announced in local newspapers. Hearing notices will be advertised as required by law and may be provided as a service to local newspapers. Occasionally an item comes up late and may be placed on an amended agenda, or as an "add on" (added too late to be included on the published agenda). Such additions should be an exception and require a majority vote prior to the approval of the final agenda at the beginning of the meeting.

Continued Hearings and Legislative Issues:

It is the goal of the Town Council to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any Town Council member who missed the initial hearing should attempt to review the DVD prior to participating in the continued hearing or legislative discussion and resolution. If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the Town Council shall consult with the Town Manager and the Town Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director's discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

Attendance Policy:

The Charter states “A member of Council may forfeit the office, if the member: (d) Misses three consecutive regularly scheduled council meetings without an excused absence.” This statement recognizes that because of the significant meeting preparation required by staff, applicants, and other supporting personnel, it is important that a quorum of the Town Council members be present for all noticed meetings. The Town Manager should be notified of a planned Council member’s absence as soon as known. The Town Manager or designee will notify the Town Attorney and Mayor. It is important that the Town Council know that it will have a quorum of its members prior to notification of a meeting/hearing. Work session attendance is equally important since that is often when information is shared, and issues resolved before putting the item on an agenda of a regular meeting for a vote.

Participation by Videoconference:

A Council member may participate in a Town Council meeting via videoconference if one of the following conditions is met:

1. Permission is granted from the Council for an “extraordinary circumstance”, including but not limited to a medical situation, unexpected travel delay, transportation issue, etc. or.
2. An emergency order or executive order authorizes the use of communications media technology, as provided in s. 120.54(5)(b)2, F.S.

A quorum of Town Council members must be met without the missing Council member(s) in attendance unless this requirement is suspended by emergency order or executive order.

7. Meeting Procedures

Generally, the Order of Agenda Items:

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Approval of Final Agenda
5. Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).
6. Local Achievements and Recognitions
7. Advisory Committee Items / Reports / Appointments
8. Approval of Minutes
9. Consent Agenda
10. ~~Proclamations, Recognitions and Awards~~

~~Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).~~

~~11. Approval of Minutes~~

~~12. Consent Agenda~~

~~13. Advisory Committee Items and Reports~~

10. Public Hearings of proposed ordinances (At conclusion of hearing, requires motion and roll call vote)

11. Administrative Agenda

- a. Introduction of proposed ordinances (Requires a motion and a majority vote for scheduling the hearing).
- b. Resolutions (Requires a motion and vote for passage)
- c. Unfinished business (Items from previous agendas scheduled by Town Manager – should be listed separately on the agenda)

~~14. New business (Scheduled by the Town Manager, should be listed separately)~~

12. Final Public Comment (not limited to agenda items)

13. Town Manager's Items and Reports

14. Town Attorney's Items and Reports

15. Council Members Items and Reports

~~16. Agenda Management (generally addressed during Council work sessions)~~

- ~~a. Topics for upcoming regularly scheduled meetings~~
- ~~b. Planning and scheduling of Management and Planning, and other work sessions~~

~~17. Review New Actions from Meeting~~

18. Adjournment (Requires a motion and vote – no second is required. It is a privileged motion allowing no discussion before vote)

Conduct of Council Meetings:

- The Mayor will conduct Council meetings, and in the Mayor's absence the Vice Mayor will do so.
- The Town Clerk shall deliver a nondenominational invocation.
- Robert's Rules of Order shall be the reference for parliamentary procedure governing the conduct of Town Council meetings when not in conflict with the Town Charter, Town Ordinances, Florida Statutes or these Policies and Procedures. It is not intended that Council meetings be unnecessarily formalistic, but rather that parliamentary procedure will be invoked only when necessary to facilitate the business of the meeting.
- All participants and audiences at Town Council meetings are expected to exhibit common courtesy and proper decorum. No personal attacks will be tolerated. The Chair may

request that someone who is being disruptive be removed from chambers after providing the individual with notice that the continuation of the disruption will result in removal.

- Individuals wishing to speak during the Public Comment times are requested to (1) fill out an index card (available in the meeting room) indicating their name and the topic they will address and (2) give that card to the Clerk prior to the start of the meeting. When recognized by the Chair, the speakers will advance to the podium and state their name for the public record.
- Public Comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by vote of the Council. The Public Comment times are intended as opportunities for interested parties to present their viewpoints to the Council members. They are not intended as question-and-answer sessions or as dialog with the Council. Response to questions and/or clarifications requested during public comment may, with the approval of Town Council, be answered immediately if there is a straight-forward, short answer, directed to the appropriate person for response at a later time or placed on an agenda for a future Council meeting.
- After a proper motion and second, discussion by the Council members shall be limited to agenda items with expression of ideas, facts, and conclusions. No member will speak twice on the item until all others who want to speak have spoken.
- The discussion by Council members is intended as an opportunity for Council members to share their viewpoints with each other. Since this opportunity does not exist outside of Council meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Town Manager or Town Attorney, which could be obtained outside of the Council meeting. While there is no time limit or censorship on comments, Council members should take into consideration the total time available in the meeting for the published agenda and the time allocated for the specific item in the agenda.

Any Council member may present resolutions related to celebrations or in support of causes for the benefit of the Town, which must be previously reviewed for form and sufficiency by the Town Attorney and subject to a vote by the Town Council.

Rules of Civility:

The Town of Fort Myers Beach Town Council recognizes that public discourse is essential to the democratic system of government. It also embraces civility in public deliberations. Rules for Council discussion and public participation while conducting meetings and workshops are as follows:

1. Speakers are permitted to deliver his or her comments without interruption, absent inappropriate language, conduct or personal attacks.
2. Speakers and debates should focus on issues, not on persons or personalities.
3. Persons are encouraged to participate in the governmental process.
4. To allow time to hear all points of view, speakers are allotted 3 minutes.

5. Sidebar discussions while others are speaking are discouraged in Council Chambers. These discussions are to be removed from the chambers so as not to be disruptive to those conducting and following Council business.
6. Only the speaker recognized by the Chairperson has the floor. Speakers should identify themselves for the record. Speakers should utilize the microphone so that their comments can be recorded.
7. We seek to understand one another's points of view.
8. Anger, rudeness, ridicule, impatience, and lack of respect for others are not acceptable behavior. Demonstrations in support or opposition to a speaker or idea such as clapping, cheering, booing, or hissing or intimidating body language are not permitted in Council Chambers or workshop facilities.
9. We should all take initiative to make things better. Our goal is to foster an environment which encourages a fair discussion and exchange of ideas without fear of personal attacks.
10. No use of profanity will be tolerated.
11. Any email or other digital or internet platform used to communicate with the Town Council, individual members of the Town Council, Town Manager, Town Attorney, or Town staff that contain personal attacks, offensive language or slurs; that are belligerent, sarcastic, accusatory or unsigned shall be deemed by the Town Council as non-compliant with these "Rules of Civility." Such communications place absolutely no obligation upon Town Council Members, the Town Manager, the Town Attorney or Town staff to respond.

Minutes:

Notes will be taken of all meetings and work sessions. The notes are then transcribed into summary minutes that become the written record of subjects discussed, conclusions reached, actions taken, and assignments given. The minutes include the names of all those participating in the meeting including Council members, staff, the Town Attorney, applicants, their attorneys and witnesses, and people who offer public comments. The minutes also serve as a record of motions and votes on all Council decisions.

Once completed, the minutes are provided to Council members for approval at their next meeting. The approval of the minutes is intended for Council members to accurately document the proceedings of the Town Council. Before moving approval, the minutes should be amended, if necessary, to portray more accurately what occurred at a Council meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what was done. Once approved by Council, the original is filed in a secure file and a copy is placed on the Town's web page.

Video and/or audio recordings when made are available at the request of the public or anyone who wishes to listen to the meeting or a portion of the meeting. The original video and audio recordings are stored in a secured area for safekeeping. Any request for production of a verbatim transcript, in whole or in part, of any meeting, workshop or other function of the Town Council or any Town committee thereof by a member of the public shall be paid for by the member of the public. Any

need for a verbatim transcript requested by Town staff shall require prior consent of payment by the Town Council, except when such requests are required by a court of competent jurisdiction or quasi-judicial officer in the proper exercise of its powers. Video and audio recordings are only the legal record in the absence of approved minutes.

Council Members Items and Reports:

Items and Reports time is set aside for Council Members to report on activities of interest to fellow members, staff, and the public. Council Members are encouraged to send as much information as possible prior to the meeting. Unless an issue is time sensitive, the item will be placed on a future agenda if a vote is required.

Agenda Management:

The Town Manager is responsible for compiling and distributing a schedule of future meetings and work sessions.

Action List:

The Town Manager is responsible for compiling and distributing a list of action items that includes a short status and expected date of completion.

How Voting Order is Established for Roll Call Votes:

The voting order for calling the roll-on Town Council votes shall be conducted at the direction of the Town Clerk. Votes on ordinances require a roll call vote; any Council member may call for a roll call vote on any motion before the Council.

Voting Conflicts:

Florida Statute has very specific rules regarding voting conflicts. If a Town Council member has a voting conflict, he/she must publicly disclose that conflict at the latest at the beginning of the discussion of the subject at the meeting. A Town Council member is permitted to participate in the discussion but cannot vote on the subject. The specific rules are set out in s. 112.3143(3)(a), F.S. as amended, quoted below:

“(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the

memorandum in the minutes.”

NOTE: s. 112.3143(b) F.S. defines “relative” as follows: “any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. Also, Section 112.3143(4) prohibits participation by an appointed (as opposed to an elected) official in the event of a voting conflict of interest.

Guidelines for Legislative Hearing Procedures:

1. The Chair opens the hearing.
2. Staff presents Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable and a copy of the business impact estimate when applicable, which shall be maintained by Town staff with the hearing’s resulting ordinance or resolution as required.
3. The Chair or Town Attorney reads the ordinance or resolution title.
4. Staff and/or the Town Attorney present(s) a brief overview of the ordinance or resolution.
5. Public input is taken.
6. Public input is closed
7. Town Council members ask questions, if any, of staff/Town Attorney
8. Town Council members discuss ordinance or resolution, including changes, deletions, etc.
9. A motion is made and seconded to either approve the ordinance or resolution as is, or with modifications, or to take some other action.
10. The motion is discussed and voted upon, with roll call voting as appropriate. Upon consideration and passage of all appropriate motions, the Chair declares the hearing on the ordinance or resolution to be concluded, continued, tabled, or other action in conformity with the motion.
11. If an ordinance is approved, the Town Council shall schedule a second reading of the ordinance for adoption.

Notes: There is no ex parte disclosure for legislative hearings.

Members of the public are not sworn in.

The above is intended as a guide and the Council may conduct the legislative hearing utilizing another procedure, so long as due process requirements are met.

Guidelines for Quasi-Judicial Land Use Hearing:

1. The Chair opens the hearing.
2. Staff present Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable, which shall be kept by Town staff with the hearing’s resulting resolution or Order.

3. The Chair asks if any Council member has a conflict of interest or has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record. See section 34-52 of the Land Development Code.
4. All witnesses are sworn in. This includes Town staff, applicant and applicant's representatives, and anyone who wishes to make public sworn testimony on this case. All persons are requested to state their name for the record when they address the Council and if presenting testimony as an expert, shall state their qualifications and area of expertise. Town Council shall vote to accept or reject the testimony as expert testimony. No statement of qualifications or additional vote is needed if the individual has been previously accepted as an expert in a particular area and this is stated in the record.
5. The applicant presents its case, including any testimony by its experts or others in support of the applicant's request. Town Council may ask clarification questions of the applicant and others giving testimony in support of the applicant's request. *
6. Town staff presents its report and recommendation. Town Council may ask for clarification or questions of staff. *
7. Local Planning Agency representative, if available, presents LPA recommendation. Town Council may ask clarification questions of the LPA representative.
8. Public sworn testimony is opened. At its conclusion, the Chair closes the public sworn testimony portion of the hearing.
9. Applicant presents rebuttal, if any. Town Council may ask detailed informational questions of applicant. **
10. Staff presents rebuttal, if any. Town Council may ask detailed informational questions of staff. **
11. The testimony portion of the hearing is closed, and Council discussion starts.
12. Council ~~next~~ votes on a resolution or Order, or takes other action if approval by ordinance is required.
13. Thereafter the hearing is closed or continued, or other action is taken in conformity with the successful motion, and the time of closure is verbally noted for the record.

*Council has determined that these Council questions are to clarify the applicant's and staff's presentations of information and are intended to be short Qs and As.

**Council has determined that these Council questions are to discuss detailed, substantive matters involving the application.

NOTE: The above is intended as a guide and the Council may conduct the quasi-judicial hearing utilizing another procedure, so long as due process requirements are met.

If new evidence is submitted prior to or at a Town Council hearing for a quasi-judicial matter after the final LPA hearing, Town Council can choose to:

1. Send the matter back to the LPA for review and recommendation.
2. To continue the hearing to provide sufficient time for the staff and Town Attorney to make recommendations; or
3. To complete the hearing if agreeable to the staff and Town Attorney.

8. Reimbursement Procedures

Travel Expenses:

It is the desire of the Town of Fort Myers Beach that Town Council members be reimbursed for certain expenses incurred while traveling on Town business. Appropriate allowances, forms and procedures are documented in the Town Personnel Manual.

Business Expenses:

From time to time, it may be necessary for members of Town Council to entertain various Federal, State and County officials while transacting official Town business. Such business expenses would normally include lunches and/or dinners. A Direct Expense Voucher may be submitted for reimbursement and must be signed by the person requesting reimbursement, and the Town Manager. Invoices must be attached as supporting documentary evidence.

Educational Reimbursement:

The Educational Reimbursement Program is used to encourage Town Council members to improve their knowledge and skills needed for the Town's effectiveness. Reimbursement conditions, forms and procedures are documented in the Town Personnel Manual.

9. Council Communications Policy and Processing Procedures

Council Communications Policy:

Any communication by individual Council members to the media, other governmental agencies, or in public forums should, as clearly as possible, distinguish between personal opinions and actions or direction taken by Town Council. This policy in no way means to censor viewpoints or restrict individual rights but is solely suggested to preserve the integrity of the Council, staff, and the Town.

Mail Processing Procedures:

Mail for the Town should be addressed to the current address. All mail is opened stamped and distributed (it is all public record). Council mail is given to the Administrative Assistant to log and process. Any Council mail that needs a prompt or detailed answer is pulled, copied, and a draft response is prepared for review, usually by the Mayor. The original is distributed, along with other mail, with a note stating a draft response is being prepared. When the response is finalized, it is copied and distributed to all Council members for reading at their leisure.

Communications with Potential Applicants for Zoning and Communications with Vendors or Service Providers:

Section 34-52 of the LDC specifies regulations regarding communications with public officials in non-quasi-judicial matters and ex parte communications with public officials in quasi-judicial matters.

10. Non-Discrimination and Harassment

Policies:

These policies are documented in the Town Personnel Manual

12. Interview/Selection Process for Legal Services

The Town Council shall competitively procure Legal Services (Town Attorney) candidates in accordance with the Town's adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Legal Services candidates. The Town Council may direct the Town Manager or designee to review the proposals submitted by the applicants for Legal Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

INTERVIEW PROCESS FOR LEGAL SERVICES

Individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP#: _____. Interview date: _____

	9:00-9:30 (Public Gathering)	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1	Coffee/muffins	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2	Coffee/muffins	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3		Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4		Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5		Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant 1: _____
 Applicant 2: _____
 Applicant 3: _____
 Applicant 4: _____
 Applicant 5: _____

NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with 1 being the top choice. The Town Clerk will tally the votes and announce each applicant's combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of only the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period of legal services, if necessary, is discussed including assignment of representation for ongoing municipal litigation cases.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

TOWN COUNCIL RANKING SHEET FOR LEGAL SERVICES

RFP# _____

DATE: _____

Councilor Name:

Councilor Signature:

Ranking (#1 is top choice)

1. _____
2. _____
3. _____
4. _____
5. _____

13. Interview/Selection Process for Town Manager

The Town Council shall competitively procure Town Manager candidates in accordance with the Town's adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Manager candidates. The Town Council may direct the acting then current Town Manager or designee to review the proposals submitted by the applicants for Town Manger Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

INTERVIEW PROCESS FOR TOWN MANAGER

Councilors rank top 5 candidates from applications. Top 5 overall are invited and scheduled for individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP# _____ Interview date: _____

	9:00-9:30 Public Gathering	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1	Coffee/muffins	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2	Coffee/muffins	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3	Coffee/muffins	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4	Coffee/muffins	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5	Coffee/muffins	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant

1: _____

Applicant

2: _____

Applicant

3: _____

Applicant

4: _____

Applicant

5: _____

NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with 1 being the top choice. The Town Clerk will tally the votes and announce each applicant's combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of only the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period, if necessary, is discussed.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

TOWN COUNCIL RANKING SHEET FOR TOWN MANAGER

RFP# _____

DATE: _____

Councilor Name: _____

Councilor Signature: _____

Ranking (#1 is top choice)

1. _____

2. _____

3. _____

4. _____

5. _____

1. **Requested Motion:**

Meeting Date: January 8, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE NAME CHANGE OF BAYSIDE PARK TO BAYSIDE VETERANS PARK; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Provides a Resolution for Town Council's discussion on Bayside Park naming on December 18, 2023.

What the action accomplishes:

Formally adopts the name Bayside Veterans Park for the public park area located at the end of Old San Carlos Boulevard.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

A veterans tribute is planned for Bayside Park and a public survey has been conducted over the past week with three choices to rename the park, which includes a reference to veterans. Town Council now needs to formally adopt the name that the survey revealed is the top choice of the public.

The survey ended on Sunday evening, December 17, 2023, and at the Town Council meeting on December 18, 2023 the public's top choice was announced with a total of 390 responses. The top choices in order of preference were Bayside Veterans Park, Bayside Veterans Memorial Park, Veterans Memorial at Bayside Park and Veterans Memorial Bayside Park. All council members agreed with selecting the public's choice for Bayside Veterans Park.

This Resolution formalizes the name change of Bayside Park to Bayside Veterans Park.

Attachments:

1. 24-10 Renaming Bayside Park to Bayside Veterans Park

Financial Impact:

N/A

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Public Works Director
Amy Baker, Town Clerk
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/28/2023
Approved - 1/2/2024
Approved - 1/2/2024
Approved - 1/2/2024
Final Approval - 1/3/2024

RESOLUTION NUMBER 24-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE NAME CHANGE OF BAYSIDE PARK TO BAYSIDE VETERANS PARK; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the public park known as Bayside Park is within the Town's jurisdiction and maintained by the Town; and

WHEREAS, the Town of Fort Myers Beach conducted an online public survey in December 2023 to rename the Town's downtown park known as Bayside Park; and

WHEREAS, the top choice received on the survey was Bayside Veterans Park; and

WHEREAS, the Town Council reached consensus at the December 18th, 2023, Town Council meeting to formally rename the park to Bayside Veterans Park in agreement with the survey's top choice.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. This resolution formally changes the name of the park from Bayside Park to Bayside Veterans Park

Section 3. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of January 2024.

1. **Requested Motion:**

Meeting Date: January 8, 2024

Reject all ITB-24-01-EN proposals for the Estero Island Beach Nourishment and Hurricane Recovery Project with cause, since all bids far exceed the estimated or budgeted amount as provided in the Invitation to Bid and Section 2-480(11) of the Town Code, and provide direction to staff to re-bid the project.

Why the action is necessary:

See attached memorandum from Coastal Engineering Consultants.

What the action accomplishes:

All bids for ITB-24-01-EN for the Estero Island Beach Nourishment and Hurricane Recovery Project will be rejected, and the project will go back out to bid at a later date.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Chadd Chustz, Environmental
Services

5. **Background:**

In December 2011, Lee County completed construction of the Estero Island Beach Restoration Project including sand placement along the north segment of the island and the addition of a terminal groin on the northern end of the beach fill. The initial 2011 beach restoration project was constructed between April 2011 and December 2011. Approximately 403,000 cubic yards (CY) of sand were excavated and placed in the beach fill area between Bowditch Point (C-174A.5) and Crescent Park (R-181.5). The beach was constructed to a berm height of 2.9 feet NAVD88 over a shoreline distance of approximately 6,700 feet (1.3 miles). All dredging was conducted in the Matanzas Pass Ebb Shoal Borrow Area located in the Gulf of Mexico approximately 1.4 miles southwest of the Project area. In addition, a terminal groin was constructed at Bowditch Point with approximately 3,630 tons of limestone rock for a length of 240 feet with a maximum crest width of approximately 12.7 feet.

In 2020, the Town of Fort Myers Beach took over the local sponsorship for beach renourishment projects from the County. The Town contracted with Coastal Engineering Consultants to conduct a project performance assessment (CEC, 2020). The initial project was proposed to renourish the previously constructed North Segment between Bowditch Point (C-174A.5) and Crescent Park (R-181.5), plus the Central Segment from Margaritaville Resort (R-182) to Lanark St (R-198). The additional Central Segment was initially included in the County's 2011 project, but was dropped due to lack of beachfront property owner participation. In 2020 and 2021, the Island was impacted by multiple tropical storms and hurricanes, most notably Tropical Storm Eta (2020) and Hurricane Elsa (2021). Multiple beachfront property owners located primarily in the south segment, which has never been restored, requested the Town include them in their beach management program. In response, the Town expanded The Project to include the Southern shoreline segment between Creciente Condo (~ R-203) and Sun Caper Condo (~ R-207).

In 2022, Hurricane Ian devastated Fort Myers Beach and eroded approximately 220,000 cubic yards of sand from the beaches of Estero Island. The Town applied to FEMA for Category B public assistance to build a berm on the "natural beach" from Margaritaville Resort (R-182) to Island's End Condo (R-210). In addition, the Town applied for Category G public assistance to

replace the 56,845 CY of sand eroded from the North Segment. The Category G public assistance was added to the scope of the Estero Island Beach Nourishment Project, adding Hurricane Recovery to the Project.

The purpose of the Estero Island Beach Nourishment and Hurricane Recovery Project restores the Town's critically eroding beach utilizing high quality beach compatible sand to provide erosion control and storm damage reduction along approximately 6.5 miles of critically eroding gulf shoreline along Estero Island, Lee County. In addition, beach nourishment provides environmental protection and enhancement for threatened and endangered species including shorebirds and sea turtles through creation and maintenance of habitats, monitoring, and implementation of best management practices and safeguards during construction.

Both State and Federal Permitting applications were submitted in December 2021. The Florida Department of Environmental Protection issued a Joint Coastal Permit and Submerged Lands Authorization in January of 2023, which expires in January 2038. The permit was modified to authorize a one-time placement of approximately 15,000 cubic yards of beach compatible material above Mean High Water (MHW) on the southern end of Estero Island (R209 to R-210) to offset the observed storm loss in this section of the island, which has not been restored previously. In addition, a second offshore burrow area was added to the project scope to provide ample sand resources for future renourishment projects. The US Army Corps Permit for the Renourishment Project was not issued until November 15, 2023, delaying the Town's ability to bid the project.

Once all permits were in hand authorizing the Project, the invitation to bid on the Estero Island Beach Nourishment and Hurricane Recovery Project was promptly published on November 17, 2023. Bids were to be received and opened on January 2. Coastal Engineering Consultants issued a Bid Review Summary shortly thereafter.

Sec. 2-480 of the Town code: (11) Cancellation of invitation to bid. An invitation to bid may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, with or without cause. The following are considered good cause for rejection of all bids: a. All bids exceed the estimated or budgeted amount. b. The specifications contain an error which causes confusion and misunderstanding among bidders. c. The item(s) or services are no longer needed. d. Lack of adequate competition. e. Notice of cancellation will be sent to all businesses solicited or submitting bids.

Per 119.071(1)(b)3 F.S.: 3. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

Shorebird breeding season dates for this project area are February 15 through September 1. The FDEP Permit conditions prohibit construction in the Critical Wildlife Area between March 1 and November 1 for Sea Turtle and Shorebird nesting. This created a very tight window of less than 3 months for the contractor to construct the Southern Segment of the Project.

Attachments:

1. 23504BidRejectionRecommend20240104

Financial Impact:

The draft Interlocal Agreement with Lee County stipulates the maximum County contribution to be \$6,431,534,

The Florida Department of Environmental Protection 23LE1 agreement with the Town provides up to \$14,013,346 in funding for the Estero Island Shore Protection Project.

Federal Emergency Management Agency (FEMA) has obligated \$1,408,050 in Category G public assistance for hurricane recovery sand for the project.

The Town's cost share for the project is \$2,247,741.

Funding is not put at risk by re-bidding the Project. The Town continues to seek additional Funding.

6. Alternative Action

7. Management Recommendations:

Reject all ITB-24-01-EN bids for the Estero Island Beach Nourishment and Hurricane Recovery Project with cause.

8. Recommended Approval:

Chadd Chustz, Environmental Services
Joe Onzick, Finance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/3/2024
Approved - 1/3/2024
Approved - 1/3/2024
Approved - 1/3/2024
Final Approval - 1/3/2024

01/04/2024

Chadd Chustz
Environmental Project Manager
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

via email: Chadd@fmbgov.com

**Re: Estero Island Beach Nourishment Project
Bid Review Summary, Bid No. ITB-24-01-EN
CEC File No. 23.504**

Dear Chadd:

Two bids were received by highly reputable and qualified dredge contractors, Callan Marine and Weeks Marine. The Opinion of Probable Construction Cost (OPCC) prepared by Coastal Engineering Consultants, Inc. (CEC) was \$22.1 Million.

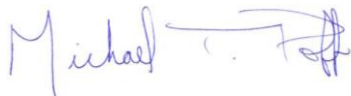
Because of the time frame for obtaining the federal permits, and the permit mandated environmental time constraints specific to nesting shorebirds and sea turtles, the window to construct the South Beach Fill was extremely small. CEC opines this was the primary reason the bids were significantly higher than our OPCC.

Project funding is comprised of State, FEMA, County, and Town sources. Based on the bids significantly exceeding the available funding, CEC recommends the Town reject both bids with cause as provided for in the Invitation to Bid and per Sec. 2-480(11) of the Town Codes.

Further, it is recommended the Town prepare a new Invitation to Bid for the Project with a Contract Time scheduled for later in 2024. The new date will provide an opportunity for more bidders and more competitive pricing by eliminating operating constraints imposed by the mandated environmental windows. In the interim, CEC recommends the Town continue to utilize available funding to place sand through truck haul project(s) in critical areas along the shoreline while respecting the environmental windows.

We appreciate the opportunity to be of service. If you have any questions, please do not hesitate to call me at (239) 643-2324, extension 126 or via email at mpoff@cecifl.com.

Respectfully submitted,
COASTAL ENGINEERING CONSULTANTS, INC.



Michael T. Poff, P.E.
President

1. **Requested Motion:**

Meeting Date: January 8, 2024

Request to waive the procurement policy based on an emergency finding and authorize the Town Manager to sign an agreement in the amount of \$73,620.00 with Kirkwood Electric to provide electrical services to the new Town Hall facility which will eliminate an interruption of the delivery of municipal services to the Town.

Why the action is necessary:

What the action accomplishes:

When we're mobilizing the new Town Hall trailers we will need power to the trailers. This action will accomplish that.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Jeff Hauge, Culture, Parks &
Recreation Director

5. **Background:**

Relocation of the new Town Hall Trailers will require new electric service. Staff contacted three electrical firms, Kirkwood Electric Co, Precision Power and Griffith Electric for pricing. Griffith Electric was unable to do the job as it was outside the scope of work. The other two quotes are attached.

Per Sec. 2-480. - Purchasing of the Town Code:

(d)

Emergency purchases.

(1)

Basis for emergency purchase. Notwithstanding any other provisions of this division, the town manager or designee may make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances. The director of the affected department will notify the town manager, who will certify the threat to public health, welfare or safety in writing and authorize the purchase of the needed items(s). The director will send a purchase order request to the finance department, together with a written explanation of the basis for the emergency purchase (see Exhibit D). The town manager or designee must approve all emergency requisitions.

(2)

Town council approval. The town manager will submit any emergency purchase in excess of \$25,000.00 to the town attorney for review and submit the contract to the town council for approval, as soon as practicable after the purchase.

Attachments:

1. Kirkwood Electric
2. Precision Power

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jeff Hauge, Culture, Parks & Recreation Director
Jeff Hauge, Culture, Parks & Recreation Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 1/3/2024
Approved - 1/3/2024
Approved - 1/3/2024
Approved - 1/3/2024
Final Approval - 1/3/2024



PO Box 152000 1018 SE 12th Court
Cape Coral, FL 33915-2000
(239) 574-3449
service@kirkwoodelectric.com

Estimate

ESTIMATE#	47234601
DATE	11/22/2023
PO#	

CUSTOMER
Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach FL 33931 (239) 788-7766

SERVICE LOCATION
Town of Fort Myers Beach 2731 Oak Street Fort Myers Beach FL 33931 (239) 788-7766

DESCRIPTION	Estimate to install (4) new services for temporary offices at Bay Oaks. Due to an unofficial site plan and specs of one of the temp offices, this is subject to change if distances and specs do not coordinate. Will need specs of the last unit to finalize permit. Will need approval from FPL if the existing transformer is capable of handling the additional load, and if it has the occupancy of handling the additional amount of needed wires. Supply labor and material for the following: Council Building 1.) Furnish electrical permit for all temporary services. *Town of Fort Myers Beach to coordinate with FPL. 2.) Coordinate with no cuts before work is performed. 3.) Subcontract boring company to install (2) 2" conduits approximately 185' with parallel 4/0 aluminum conductors. 4.) Construct and install new load bearing backboard. 5.) Install new 400-amp meter enclosure. 6.) Supply and install 400-amp fused disconnect with 350-amp fuses. 7.) Install (4) 125-amp disconnects. 8.) Install outdoor trough to connect main disconnect to secondary disconnects. 9.) Trench and install (4) new 1-1/2" conduits from secondary disconnects to mobile office with 125-amp conductors. 10.) Install new grounding to code. 11.) Label and test upon completion. Executive Office 1.) Furnish electrical permit for all temporary services. *Town of Fort Myers Beach to coordinate with FPL. 2.) Coordinate with no cuts before work is performed. 3.) Subcontract boring company to install 2" conduits approximately 150' with 4/0 copper conductors. 4.) Construct and install new load bearing backboard. 5.) Install new 400-amp meter enclosure. 6.) Supply and install 400-amp fused disconnect with 300-amp fuses. 7.) Install (3) 125-amp disconnects. 8.) Install outdoor trough to connect main disconnect to secondary disconnects. 9.) Trench and install (3) new 1-1/2" conduits from secondary disconnects to mobile office with 125-amp conductors. 10.) Install new grounding to code. 11.) Label and test upon completion. Community Development Office 1.) Furnish electrical permit for all temporary services *Town of Fort Myers Beach to coordinate with FPL. 2.) Coordinate with no cuts before work is performed. 3.) Subcontract boring company to install 2" conduits approximately 235' with 4/0 copper conductors.
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- 4.) Construct and install new load bearing backboard.
- 5.) Install new 400-amp meter enclosure.
- 6.) Supply and install 400-amp fused disconnect with 300-amp fuses.
- 7.) Install (3) 125-amp disconnects.
- 8.) Install outdoor trough to connect main disconnect to secondary disconnects.
- 9.) Trench and install (3) new 1-1/2" conduits from secondary disconnects to mobile office with 125-amp conductors.
- 10.) Install new grounding to code.
- 11.) Label and test upon completion.

Finance and Admin Office

- 1.) Furnish electrical permit for all temporary services.
*Town of Fort Myers Beach to coordinate with FPL.
- 2.) Coordinate with no cuts before work is performed.
- 3.) Subcontract boring company to install 2" conduits approximately 210' with 4/0 aluminum conductors.
- 4.) Supply and install new concrete banjo.
- 5.) Trench and install new (2) 1-1/2" conduits from meter main to mobile unit with 125-amp conductors.
- 6.) Label and test upon completion.

Council Building = \$23,755

Executive Office = \$17,430

Community Development Office = \$20,940

Finance and Admin Office = \$11,495

NOTES:

- * Please read all items/work noted in quote. If you have any questions, please contact us prior to signing the quote.
- * Please be patient with our scheduling, we have the majority of our techs working out on our local islands to restore power. We are extremely busy and trying to get to everyone.
- * Additional charges may be required once work begins if found to be unsafe.
- * If AHJ requires additional work to be done, there will be additional charges.
- * Not replacing wire affected by water or salt water over time could result in issues with corrosion, Kirkwood Electric will not be responsible for any damages due to the request of the homeowner.
- * Kirkwood Electric recommends replacing meters and panels that have been underwater. If it becomes more than 6 months after work to temporarily fix panels and meters and no work has been done to fix meters or panels, Kirkwood Electric is not responsible for any damage that happens due to the electric meters or panels not being fixed.
- * Kirkwood Electric will remove and lawfully dispose of the items as mentioned above and retain sole and exclusive right to any proceeds derived from the sale of any such items.
- * Pricing includes only work described in quote, any additional work including additional work requested by local jurisdiction will be completed upon approval for additional charges.
- * Drywall and/or stucco repair or repair cost (if needed) not included in price.
- * Price is good for 15 days from quote date.
- * All material is guaranteed to be as specified.
- * All work is to be completed in a workmanlike manner according to standard practices.
- * Any alterations or deviation from the specified including extra cost will be executed only upon written orders and will become an extra charge over and above the estimate.
- * All agreements contingent upon strikes, accidents, or delays beyond our control.
- * Owner to carry fire, tornado, and other necessary insurance, our workers are fully covered by workers compensation insurance.
- * Payment is to be made as follows: Paid in full upon completion.
- * Invoices become delinquent if unpaid 10 days after the invoice date and are subject to a monthly service charge of 1.5%, 18% annual and any attorney fees incurred by Kirkwood Electric

Estimate

Description	Qty	Rate	Total
Lump Sum Billing	1.00	73,620.00	73,620.00

CUSTOMER MESSAGE

Estimate Total: **\$73,620.00**

PRE-WORK SIGNATURE

Signed By:

--



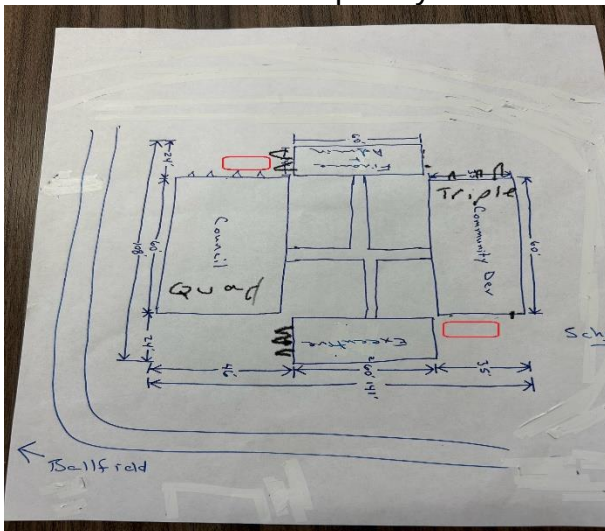
Electrical for 12 Trailers

December 20th, 2023

Jeff Hauge and
City of Fort Myers Beach
Jeffhaug15@gmail.com
239-788-7766
Dear Jeff,

Quote: 23180
Bid Property: Fort Myers Beach Trailers

Precision Power Electric is pleased to present the following quote for the electrical for 12 trailers per layout.



We have received the necessary information from the Town of Fort Myers Beach and we will provide all materials, machinery, and labor to install the following:

- Installation of 6'x8' concrete pad for (2) power sheds this will house 4 transformers and (12) disconnects for the trailers.
- Digging and trenching for conduits. Saw cutting drive and back filling with dirt only. (repairs to driveway by others).
- Connection of all 12 trailers with power.
- Temp power for 12 trailers for lighting only immediately.

**Note: 1 year warranty on workmanship and materials.
Able to start the project immediately.
Project Duration approximately 30 days.**

Price: \$200,000.00

Thank you for the opportunity to offer you this quote. If you have any additional questions, please feel free to contact me.

Sincerely,

Vice President

Mitchell Beyett

Phone: 239-788-3830

Payment Terms

Precision Power Electric agrees to submit invoices, and The City of Fort Myers Beach agrees to pay invoices, in accordance with the invoice and payment schedule below. All



payments shall be made at the address indicated on the Precision Power Electric invoice.

A late payment charge of five one-hundredths (.05) of one percent per day (18% per annum, based upon a 360-day year) will be added to any amount not received by Precision Power Electric on or before the invoice payment date indicated on the payment schedule. Where this rate exceeds the maximum rate permitted by applicable law, the maximum permissible rate will apply.

Terms:

- 50% payment upon signing of contract.
- 50% Upon completion of final electrical.
- Please allow 1-3 weeks for any back ordered material to arrive.
- Precision Power Electric is not responsible for back-order materials that are out of our control.

All orders are subject to credit approval by Precision Power Electric

This quote will remain valid for 90 days from the proposal delivery date. In the event this proposal is not accepted prior to this date, the price, schedule and other portions of this proposal may be subject to change. Due to copper pricing in this volatile market.

Customer Signature _____
Date _____

Precision Power Electric Signature _____
Date _____

GENERAL TERMS AND CONDITIONS

This Precision Power Electric Proposal specifically incorporates the following General Terms and Conditions. Collectively the Proposal and these General Terms and Conditions are referred to herein as the "Agreement" between Precision Power Electric and Purchaser. All orders arising from this Proposal and their related terms and conditions are subject to review and approval by Precision Power Electric prior to acceptance.

1. **TAXES:** Unless otherwise indicated, the price does not include any sales, use, excise, value added or similar taxes nor does it include any import or export duties, customs fees or other costs associated with movement of Goods across international borders, and Purchaser shall be responsible for all such taxes, duties or fees, whether or not invoiced by PPE. If taxes, duties or similar fees are included as part of the price and the rate or base of the tax, duty or fee is increased or decreased, Purchaser will pay any increased taxes, duties or fee and PPE will give credit for any tax, duty or fee decrease. Absent written agreement to the contrary, PPE will pay the tax, duty or fee and be reimbursed by Purchaser. In the event Purchaser is exempt from such taxes, duties or fees or should Purchaser elect to pay such taxes, duties or fees directly to the appropriate authority, then Purchaser will provide PPE with a valid tax or exemption certificate or similar document satisfactory in form to PPE.

2. **PAYMENT/SHIPPING TERMS:** Invoices will be issued for the value of the Goods shipped and are due fifteen (10) days from invoice date. Service invoices (including engineering, design, mechanical installation or electrical installation where applicable) may be issued separately and will be based on services performed and/or costs incurred. Such service invoices are due upon receipt by Purchaser.

A late payment charge of five one-hundredths (.05) of one percent per day (18% per annum, based on a 360-day year) will be added to any amount not received by PPE within 15 days of invoice date. Where this rate exceeds the maximum rate permitted by applicable law, the permissible maximum rate will apply.

If this Agreement includes installation, when aggregate payments total 100% of the Agreement price, the remaining, Purchaser will pay the amount within 10 days after PPE's completion of installation commissioning. However, should there be a dispute about the completion of installation commissioning, then Purchaser shall inform PPE of any claimed defects in the Goods and the amount of the retainer necessary to correct claimed defects will be mutually determined. Purchaser will then pay the final invoice less the determined amount. Purchaser will pay the remaining balance upon correction by PPE of any defects in the Goods as mutually determined. Shipping terms will be F.O.B. Origin, Freight Pre-Pay and Add unless otherwise indicated.

3. **WARRANTY:** Unless otherwise specifically stated in this Proposal, PPE will cover free from defects caused by workmanship for a period of one year from the date of installation.

4. **INSURANCE BY PPE:** PPE will maintain insurance covering its operations as follows:

- a. Worker's Compensation Insurance as required by the state having jurisdiction over PPE and Employer's Liability with limit of \$1,000,000.

5. **INSURANCE BY PURCHASER:** Purchaser assumes all risk of loss from damage and destruction of the Goods and any applicable installation charges thereof. Such risk of loss will transfer to Purchaser at the F.O.B. point pursuant to the shipping terms of the Agreement, or if not specified, F.O.B. Origin. Purchaser agrees to acquire and

6. **PURCHASER'S RESPONSIBILITIES:** Where installation is to be performed by PPE, Purchaser agrees to:

- a. Prepare the work site to permit installation and operation of the Goods. Purchaser's responsibility includes structural strength of and any alteration to building, as well as the removal of obstructions.
- b. Provide necessary access roads, dock areas, suitable for receiving and unloading the Goods, and any available elevator or crane service for the handling of the Goods for PPE's use at the installation site.
- c. Provide a clear path for the ingress to and egress from the installation site for PPE's personnel and Goods.
- d. Prior to commencing installation of the Goods, obtain all necessary federal, state and local government licenses or permits.
- e. Accept responsibility for all excavations, drainage, piling, foundations, masonry and concrete work, concrete lining, steel and other building materials necessary to the installation of the Goods.
- f. Provide secure, dry, convenient storage for PPE's Goods, tools and materials used on the site. Adequate working space will also be provided by Purchaser for PPE's installation crews.

8. **CHANGE ORDER:** The parties may agree at any time prior to final payment of the Agreement to make additions, deletions, or other revisions by Change Order or Work Order (defined below) without invalidating the Agreement. No such change will be performed by PPE until an approved Change Order or Work Order is executed as provided below.

- a. When the price, schedule and other conditions relating to the change can be determined prior to the start of work under the change, a document describing this change ("Change Order") will be issued for execution by the parties.
- b. When the change requires immediate action and the issuance of an executed Change Order with firm price would unreasonably delay the change, Purchaser shall place its signature upon a document authorizing PPE to proceed with the change ("Work Order"). After the change under the Work Order has been completed, PPE will calculate the firm price for the change using actual costs (including overhead and reasonable profit) current at time of performance of the work. Completed Work Order(s) will be incorporated into a Change Order for execution by the parties.

Unless expressly modified by a Change Order or Work Order, the provisions of the Agreement and these General Terms and Conditions will govern all work performed under such Change Order or Work Order.

9. **INSTALLATION BY PURCHASER:** The Purchaser is responsible for any improper adjustments, operation, maintenance, repairs or alterations by persons other than PPE.

10. **SAFETY:** Purchaser agrees to train and supervise his operating and maintenance personnel in the proper use of the Goods furnished hereunder in accordance with normally recognized safety requirements, including OSHA, and the American National Standards Institute's "Safety Standards for Conveyors and Related Equipment", ASME B20.1-1996, Section 5 and Addenda (or latest edition). Additionally, when Purchaser installs Goods, Purchaser shall follow proper installation practices as defined in ASME B20.1-1996 and Addenda (or latest edition) or similar authoritative industry standards. Copies of these ANSI Standards can be procured from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017. Further, Purchaser agrees to follow all PPE operating and safety instructions relating to the Goods.

11. **LIENS:** PPE will protect Purchaser as to any lien asserted against Purchaser's property for work, material or services furnished by others at PPE's request when Purchaser makes the payments provided for in the Agreement.

12. **SECURITY INTEREST:** Purchaser hereby grants PPE a security interest in the Goods provided by PPE to secure any and all obligations of Purchaser to PPE under the Agreement including but not limited to the purchase price payable by Purchaser under the Agreement and/or Change Orders and all other amounts now and hereafter owing by Purchaser to PPE hereunder.

13. **DELAYS:** If PPE's performance is delayed or prevented by Purchaser or other cause uncontrolled by PPE (such as acts of God, casualty, labor disturbance, strikes, riots, civil disturbance, inability to obtain supplies or transportation, explosion, flood, fire, power failure, embargos, boycotts, governmental or military action, war, terrorism, or any order modification by Purchaser):

- a. Purchaser agrees to pay PPE invoices upon notification that the Goods are ready for shipment in accordance with the shipping schedule and to reimburse PPE for expenses incident to such delay including, without limitation, the cost of engineering, the cost of Goods and labor escalations; maintaining, repairing, refurbishing and replacing Goods; and storage, demurrage, and pullout charges from installation site; and



- b. The time for delivery of the Goods and performance of the services will be extended for a period at least equal to the time lost by reason of the delay, and PPE will not be liable for any damages caused by the delay.
14. **ASSIGNMENT/SUBCONTRACTS:** Purchaser shall not delegate the performance of any obligation hereunder, nor assign any rights arising under the Agreement, to any third person without the prior written consent of PPE. PPE reserves the right to use subcontractors in the performance of any services to be performed by PPE.
15. **LIMITATION OF REMEDIES:** THE AGREEMENT SETS FORTH PURCHASER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY DEFECT IN OR NON-CONFORMITY OF ANY GOODS OR SERVICES AND FOR ANY NEGLIGENT DESIGN, MANUFACTURE, OR INSTALLATION OF THE GOODS, AND FOR ANY BREACH OF THE AGREEMENT BY PPE. IN NO EVENT SHALL ISD BE LIABLE FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR COSTS OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, LOSS OF PRODUCTION, OR FOR INDIRECT, SPECIAL, LIQUIDATED, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE. ISD'S MAXIMUM CUMULATIVE LIABILITY UNDER THE AGREEMENT FOR ANY AND ALL CLAIMS, DAMAGES, LOSSES OR LIABILITIES OR THE LIKE OF ANY KIND SHALL NOT EXCEED THE CONTRACT PRICE UNDER THE AGREEMENT. PURCHASER AND ISD AGREE THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS ARTICLE ARE SEPARATE AND INDEPENDENT FROM ANY REMEDIES WHICH PURCHASER MAY HAVE IN THE AGREEMENT AND SHALL BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES SHALL BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.
16. **PROPRIETARY INFORMATION:** All the information in the PPE Proposal is confidential and has been prepared for the Purchaser's use solely in considering the purchase of the Goods described. Transmission of all or any part of this information to others or Purchaser's use for any other purpose is unauthorized without PPE's prior written consent.
17. **CHANGES IN LAWS AND REGULATIONS.** PPE's prices and timely performance are based on all applicable laws, rules, regulations, orders, codes, standards or requirements of governmental authorities effective on the date of PPE's Proposal. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle PPE to an equitable adjustment in the prices and any time of performance.
19. **MISCELLANEOUS**
- Entire Agreement.** The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, discussions, representations or proposals made between the parties. The terms of this sale are expressly limited to the terms and conditions set forth herein. Any changes, modifications, or additions to the Agreement are binding and enforceable only if made in writing and signed by the respective parties. Any and all terms set forth on Purchaser's purchase order or otherwise proposed by Purchaser are hereby objected to and shall be void unless expressly agreed to in a written document signed by both parties.
- Governing Law.** The Agreement shall be interpreted and enforced in accordance with the substantive laws of the State of Florida without regard to its conflicts of law principles.
- Severability.** The invalidity or unenforceability of any provision of the Agreement or these General Terms and Conditions shall not affect the enforceability or validity of the remaining provisions, and the Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.
- Nonwaiver.** Failure of either party to require performance of any provision shall not affect its right to thereafter require full performance of that provision. The waiver by either party of a breach of any provision shall not constitute a waiver of any subsequent breach or nullify the effectiveness of such provision.
- Captions.** Captions preceding particular Articles are for convenience only and are not to be construed as part of the Agreement or as a limitation of the scope of the Article to which they refer.
- Ambiguities.** Each party and its counsel have participated fully in the review and revision of the Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting the Agreement.

1. **Requested Motion:**

Meeting Date: January 8, 2024

Request for use of Time Square for a Farmer's Market on Saturdays

Why the action is necessary:

Ord. 20-17

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Shop Local Productions is requesting the use of Time Square for a Farmers Market, which will be the same as the Farmers Market on Fridays in Time Square. They would like to purchase Business Parking Passes under the bridge, which would impact the residents that have already paid for parking passes and are not able to park under the bridge for 5-6 hours on Fridays.

Attachments:

1. SE_Farmers Market Times Square for Saturdays 2024

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Patty Prevost, Code Supervisor/STR Coordinator
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/26/2023
Approved - 12/27/2023
Approved - 12/27/2023
Approved - 12/28/2023
Final Approval - 12/28/2023



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 Email: Specialevents@fmbgov.com



Name of event Fort Myers Beach Market @ Times Square

Attach separate sheet of paper with detailed description of event

Date(s) and times of event 9am-2pm Feb. 3, 10, 17, 24 MAR. 29, 16, 23, 30 APR. 6, 13, 20, 27 MAY 4, 11, 18, 25

Address of event Times Square

Expected # of participants/attendees up to 49 vendors

Sponsoring Organization Shop Local Productions

Organization address 19552 The Place Blvd ESTERO 33928

Contact Person/Phone# Linda Miller 239-289-3786

E-mail ShopLocalPro@gmail.com

Amplified Music Y ☒ N ☐ 500 Ft Notifications _____ Copy of Letter NA

Renting Town Property Y ☒ N ☐ Renting Parking Spaces Y ☒ N ☐

How many Spaces? 40-49 How many hours 5

Extension of Premises? Y ☐ N ☐ ABT Form _____ How many days? 21 (Over 3 days needs to go to Council)

Letters of Permission to use Property _____

Letters of Permission to use Parking _____ Parking Plan _____

Site Plan ☒ Insurance ☒ (Naming Town of FMB as Certificate Holder)

Requesting Water Y ☐ N ☒ Electric Y ☐ N ☒

Requires Council Approval:

Waiver of open container Y ☒ N ☐ Will Purchase Business Pkg Permits Waiver of Town parking fees Y ☐ N ☐

Waiver of Noise Ordinance Y ☐ N ☐ Recurring Event Y ☒ N ☒

Applicant Signature Linda Miller

Printed Name Linda Miller

This permit is subject to the applicant meeting all requirements contained in Fort Myers Beach Code of Ordinance Book Part 2 Chapter 22 and in compliance with all items in the special event application.

Applicant to Complete:

Company managing trash removal: Vendors remove trash

No. of dumpsters: 0 Type of dumpsters: NA

Who is responsible for clean-up and payment: NA

City right-of-way Parking Use: _____ Number of spaces: _____

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: _____

Approval: _____ Date: _____

FMB Environment Science: Tel (239)765-0202

FMB Environmental Sciences remarks: NA Not on Beach

Approval: _____ Date: _____

Please forward the completed application and site plan along with the individual approval request to each identified agency below. Once complete return all to our office.

Florida DEP: DEP now provides an online application process for minor event approval

Self Certification for CCCL Permit Guidance Document: <http://www.dep.state.fl.us/beaches/>

FOR MAJOR EVENTS ONLY CONTACT

Kelly Cramer

Tel (239)770-7502 Fax(850)412-0590

Email: kelly.cramer@floridadep.gov

Florida DEP remarks: _____

Check list: Application _____ **Site Plan** _____ **Description** _____

Florida DEP approval: _____ **Date:** _____

Turtle Time Inc.: Eve Haverfield

Tel (239)481-5566 eve@turtletime.org

Turtle Season is May 1 through October 31

Turtle Time remarks: Not applicable Dates.

Turtle Time approval: _____ **Date:** _____

FORT MYERS BEACH FIRE DEPT

100 Voorhis Street • Fort Myers Beach, Florida 33931

Tel (239) 590-4210

Fire Guards: (how many?) _____

Fee: _____

Flammable Vegetation: _____

First Aid Equipment: _____

Fire Extinguishing Equipment: _____

Special Arrangements: _____

Print Name

Approval Signature

Date

prevention@fmbfire.org – For Fire Department Handbook and additional application.

LEE COUNTY SHERIFF'S DEPT

Tel (239)477-1830 Fax (239)432-0268

15650 Pine Ridge Road, Fort Myers, FL 33908

Parking: _____

Deputies (how many?) _____

Traffic Control: _____

Fees: _____

Special Arrangements: _____

Print Name

Approval Signature

Date

Fort Myers Beach Market Description for additional Day (Saturdays)

as being requested by Working Locals.

@Time Square (In the event of construction-Backup Location will be Under the Matanzas Bridge)

Sponsored by Shop Local Productions

Open Saturdays 9am-1pm From February 2024 through May 2024

Mission:

To provide a family-friendly, free-to-attend event for all ages to convene and have access to healthy produce, boutique foods, artisan crafts and other items.

Shop Local Production offering to purchase 49 additional annual business parking passes for the space. In the event of moving, sandwich boards will be allowed at Time Square to notify customers/visitors of the relocation.

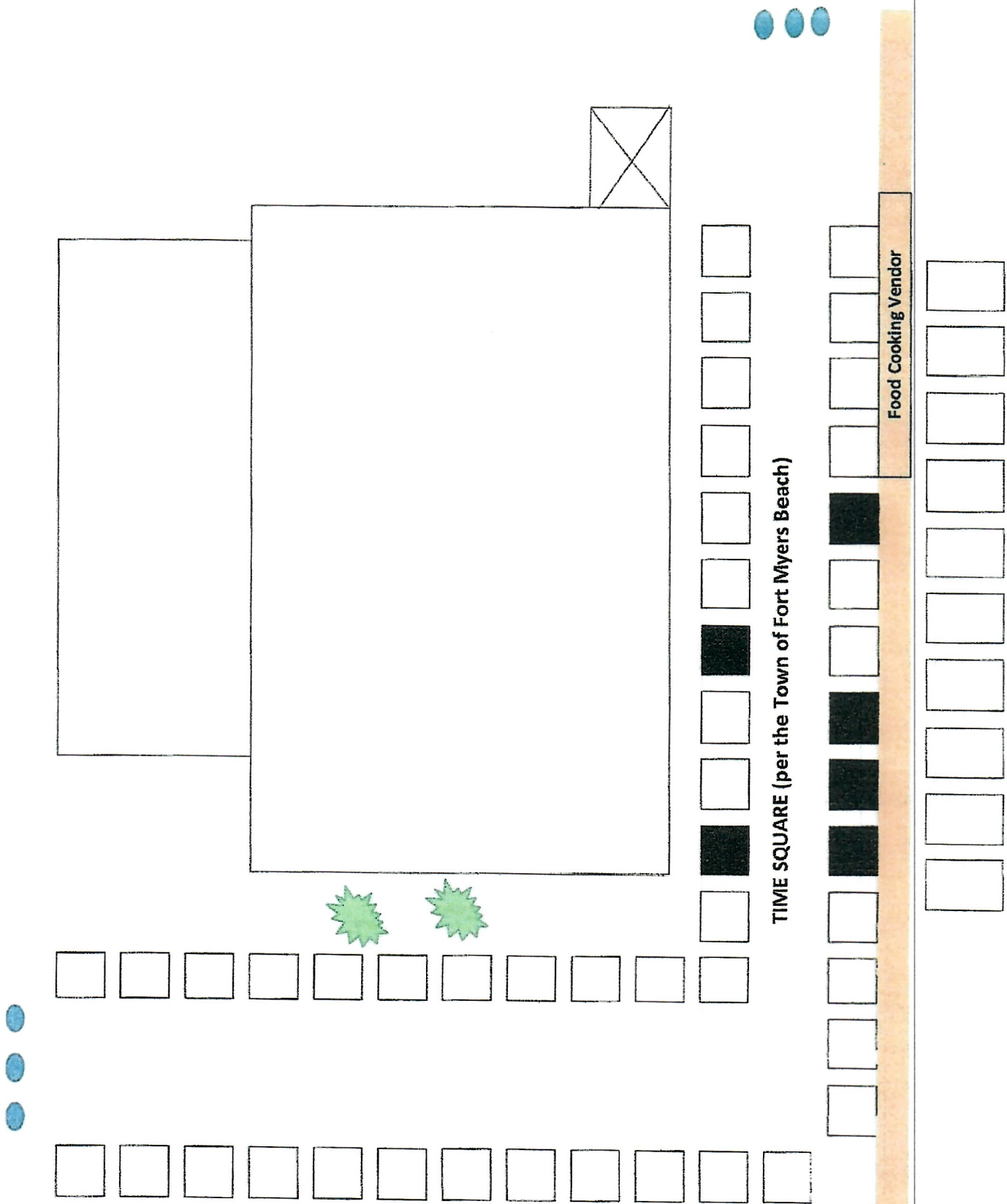
Description:

More than ever since Hurricane Ian, FMB locals and visitors request the need for fresh varietal foods, produce and commodities brought to the island. With roots going back to 1934 Farmers Markets on FMB have been part of the fabric of beach life in a huge way for the past 30 years and reaching a peak of 4 days a week on different parts of the island pre-Hurricane Ian. This niche (cottage foods, coffee, bakeries, smoothies, skincare, art and wearable art, produce, seafood and meats) fills a void in Island shopping. Since advertising is weekly with 15K Google views, FMB Markets have a history of boosting local neighboring restaurants and businesses. Markets create a beach vibe unique to FMB.

Superb Record:

Voted annually by locals as "Neighborhood Favorites," FMB Markets have had zero emergency calls and zero accidents in the tenure of leadership from Shop Local Productions) since 2015), creating zero burden on emergency services and thus taxpayers.

Vendor Inquiries can be directed to 41markets.com





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/07/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hiscox Inc. 5 Concourse Parkway Suite 2150 Atlanta GA, 30328	CONTACT NAME: PHONE (A/C, No, Ext): (888) 202-3007 FAX (A/C, No): E-MAIL ADDRESS: contact@hiscox.com
INSURED Watergemz, LLC DBA Shop Local Productions 19552 The Place Blvd Estero, FL 33928	INSURER(S) AFFORDING COVERAGE INSURER A: Hiscox Insurance Company Inc INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # 10200

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y		P100.409.208.4	07/15/2023	07/15/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ S/T Gen. Agg. \$
	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N N/A						PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER Town of Fort Myers Beach 2525 Estero Blvd. Fort Myers Beach, FL 33931	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

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1. **Requested Motion:**

Meeting Date: January 8, 2024

First Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 18-04, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on January 22, 2024 at 9:00 a.m.

Why the action is necessary:

The ordinance must be amended to change conditions of approval.

What the action accomplishes:

Amending the conditions will allow the applicant to utilize areas on the beach parcel later into the evening

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

Original CPD Approval: May 21st, 2018 (Ord. 18-04)

- 27 Conditions of Approval included

Amendment to CPD (Ord. 23-09): August 7th, 2023

- Amendment to Condition of Approval #14, removing language which forbade the development of parcels 1, 2, 3 and 5, allowing for future Councils to consider construction in those areas in conformity with the Comprehensive Plan and LDC.

Attachments:

1. Ordinance 24-01
2. Council Staff Report
3. Revised Applicant Narrative
4. Application
5. For Reference: The Whale 23-80, SEZ Amendment
6. For Reference: The Whale Resolution 13-09
7. TC postcard

Financial Impact:

unknown

6. Alternative Action

Request revision of proposed language change

7. Management Recommendations:

Determine whether change to conditions is appropriate.

8. Recommended Approval:

Jason Smalley, Senior Planner
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/27/2023
Approved - 12/28/2023
Approved - 12/28/2023
Approved - 12/28/2023
Final Approval - 12/28/2023

ORDINANCE 24-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 18-04, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend. or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, TPI-FMB LLC and Steve Hartsell with Pavese Law Firm, applicants and agents for the property owners, generally located at 1170, 1180/1192, 1204/1206 Estero Boulevard, 251 Crescent St, 1150 Fifth St. and other unaddressed parcels, parcels generally identified as STRAP numbers 24-46-23-W3-00205.0070 (MCP parcel #3), 24-46-23-W3-00006.0000 (MCP parcel #1), 24-46-23-W3-00206.0060 (MCP parcel #1), 24-46-23-W3-00009.0000 (MCP parcels #2 AND #5), 19-46-24-W4-U0494.2609 (MCP parcel #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP parcel #2), 19-46-24-W4-0140B.0070 (MCP parcels #2 AND #5), 19-46-24-W4-U0496.2608 (MCP parcel #2), AND 19-46-24-W4-U0498.2607 (MCP parcels #2 AND #6) in the Town of Fort Myers Beach, filed applications to amend Ordinance 18-04 and amend conditions of approval of the commercial planned development zoning; and

WHEREAS, Ordinance 18-04 rezoned the property from the Commercial Planned Development (CPD), Downtown, and Environmentally Critical (EC) zoning districts to CPD with Master Concept Plan (MCP) in order to develop a hotel resort and associated facilities, on 5.1+/- acres more or less property, located at 1170, 1180/1192, 1204/1206 Estero Boulevard in the Town of Fort Myers Beach; and

WHEREAS, the subject property is located in the Pedestrian Commercial and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, with the exception of portions of Town or County right-of-way, the applicant has indicated the subject property is under common control and Tom Torgerson serves as the managing member for each ownership listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on December 19, 2023; and

WHEREAS, at the December 19, 2023 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-85; and

WHEREAS, at the December 19, 2023 public hearing the LPA recommended approval by a 6-0 vote with one member abstaining; and

WHEREAS, on January 8, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was legally advertised and held before the Town Council on January 22, 2024; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, with the following terms, conditions, and requirements which the Town Council finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit A provides the approved property development regulations, the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

WHEREAS, Exhibit B is the approved Master Concept Plan, updated per the adopted original Ordinance 18-04; and

WHEREAS, the Town Council finds that this request to amend existing ordinance 18-04 for a CPD, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #1

Deviation from LDC Section 34-1803(a) which establishes equivalency factors for converting allowable dwelling units to hotel rooms. The equivalency remains at three, a total of 254 hotel rooms (224 rooms on Parcel 1 and 30 rooms on Parcel 2) per the revised Master Concept Plan pages dated 5/2018 are authorized due to exceptional circumstances and unique public benefit on record to include view corridor and permanent perpetual transfer of density and development rights from the VE zone to the AE zone.

Deviation #2

Deviation from LDC Section 34-675(b) which limits building heights as follows: 3 stories and 30 feet along Crescent Street and Fifth Street; 3 stories and 40 feet along the south side of Estero Boulevard; to allow the main resort building which fronts on Estero, Crescent and Fifth to be 4 stories and 38 feet, 10 inches feet above average base flood elevation and along the south side of Estero Boulevard of 4 stories, and other buildings to be at the lesser heights as shown on the Master Concept Plan.

Deviation #3

Deviations from LDC Section 34-675(c) which limits floor area ratio (FAR) to 1.4 for properties fronting on Estero Boulevard and to 1.0 for all other properties in the CPD to allow a FAR of 1.55 on Parcel 1 and Parcel 2 and Parcel 3.

Deviation #4

Deviation from the LDC Section 10-416(d)(2) which requires a Type D buffer (15 feet wide with 5 trees and staggered hedges to form a 3-foot visual screen between parking and a right-of-way) - to replace the Type D buffer with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on the Master Concept Plan.

Findings for the rezoning:

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested amendment to Commercial Planned Development (see LDC 34-85 and 34-216) ordinance 18-04:

- a. Minor ambiguities were resolved through the deviation process.
- b. Long-standing blighted conditions on the subject property can be ameliorated through approval of this rezoning.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.

- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- o. The rezoning meets all specific requirements of the Comprehensive Plan that are relevant to the request, including the following:
 - Policy 4-C-4 on building heights taller than the standard height limit
 - Policy 4-C-6 on hotel/motel densities
 - Policy 4-C-8 on density transfers
 - Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts

WHEREAS, the Town Council made the following formal findings before making final decisions on the four requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216 and 34-1803):

1. Deviations #1, #2, and #3 are being partially approved only due to the exceptional circumstances presented by the coordinated redevelopment of several critical parcels in the downtown zoning district in furtherance of policies in the Comprehensive Plan and design guidance provided by the Old San Carlos Boulevard / Crescent Street Master Plan. Key public benefits offered by the applicant include a perpetual view corridor along 324 feet of the beach side Estero Boulevard across the beach club resulting from a permanent transfer of density and development rights from the VE zone to the AE zone; and a second perpetual view corridor at the foot of the Matanzas Pass Bridge resulting from the permanent transfer of density and development rights, no buildings on Parcel 3, and the donation of Parcel 4 to the Town of Fort Myers Beach.
2. All aspects of the proposed development, as limited by the special conditions being imposed by the Town Council, are compatible with the surrounding area,

including building height, traffic flow, and intensity of use.

3. The proposed development, as modified by these deviations, clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.
4. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
5. Granting these deviations will enhance the achievement of the objectives of the proposed development.
6. The general intent of the LDC to protect public health, safety, and welfare will be preserved and promoted with these deviations.
7. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
8. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to amend Ordinance 18-04 and amend conditions of approval of the commercial planned development zoning, **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** the Application.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did meet its burden of proof that the request to amend Town of Fort Myers Beach's Ordinance no. 18-04 and amend the conditions of approval for the commercial planned development zoning, **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 18-04 is amended by this Ordinance and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will

not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	N/A
Karen Woodson, Council Member	_____

ADOPTED this _____ day of January 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

EXHIBITS

Exhibit A – Amended Sec. 34-3238

This Ordinance was filed in the Office of the Town Clerk on this _____ day of January 2024.

Exhibit A CONDITIONS OF APPROVAL

This project area includes six (6) parcels as demonstrated in MCP X-103-BNDY.01 Boundary Survey. Parcels 1, 2 and 3 are to be rezoned to Commercial Planned Development (CPD). Parcels 4, 5, and 6 will retain their existing zoning classifications. All parcels are included in the Master Concept Plan and subject to the conditions as outlined below:

- 1** Parcels 1, 2, and 3 are authorized for a maximum of 254 hotel rooms. Parcel 1 is approved for a maximum of 224 hotel rooms. Parcel 2 is approved for a maximum of 30 hotel rooms. Parcel 3 is approved for surface parking only and no other improvements or hotel rooms, other than an accessory surface parking lot, is permitted. The transfer of density and development rights of Parcel 3 is permanent and binding.
- 2** The CPD is authorized to allow building heights as follows, with these heights measured in accordance with 34-631 of the LDC, as depicted on the Master Concept Plan, and as described:
 - a. The main resort building on Parcel 1 may be up to 4 stories and up to 38 feet, 10 inches above base flood elevation, provided that the highest points of the roofline and any architectural features across the property shall not exceed 52 feet from 4.5 feet above mean sea level elevation.
 - b. The larger building on Parcel 2 may be up to 4 stories, provided that the highest points of the roofline and any architectural features shall be a height of 52 feet, 4 inches or less, above existing typical ground level. Approved building heights for all buildings on Parcel 2 are shown in the Master Concept Plan.
 - c. No buildings or vertical structures are permitted on Parcel 3. The transfer of density and developments rights on Parcel 3 is permanent and binding.
- 3** The CPD is authorized to allow floor area ratios as follows, measured in accordance with 34-633 of the LDC. The total land area of Parcel 1, 2, and 3 may be utilized for the floor area ratio calculation of 1.55. The square footage of the proposed buildings may be clustered as depicted on the Master Concept Plan and includes:
 - a. The constructed floor area ratio on Parcel 3 and 5 shall be 0.0. Buildings, or any other improvements other than improvements associated with an at surface grade parking lot on Parcel 3 and a pool security fence on Parcel 5, are prohibited on these parcels.
- 4** The CPD is authorized to replace the Type D buffer required by 10-416(d)(2) of the LDC with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on Sheets X-502-RW.00 through X-504-RW .02 of the Master Concept Plan as revised through May 2018, subject to the following requirements:

- a. Prior to obtaining any development orders, the landowner will dedicate to the town/public a perpetual public sidewalk easement to accommodate a sidewalk of seven (7) feet in width on the south side of Fifth Street where the MCP shows portions of the proposed sidewalk on private land.
- b. The landowner will construct the sidewalks, curbs, and tree yards and will plant the lawn and street trees, as shown on the Master Concept Plan, prior to the issuance of any temporary certificates of occupancy including for adjoining buildings. These improvements must meet technical specifications of the Town of Fort Myers Beach along Fifth Street and Crescent Street and of Lee County along Estero Boulevard, except for such deviations as granted by the Town when reviewing and approving the Master Concept Plan. The landowner will maintain the tree yards and street trees in perpetuity.
- c. The street trees shown along Estero Boulevard will be located closer to the curb if, prior to approval of the Development Order, but no later than January 2019 and with appropriate documentation of coordination, FDOT and Lee County approves the new 1.5-foot lateral offset standard alignment of the Florida Department of Transportation.
- d. Prior to Development Order application, the landowner will document their efforts to the Town to seek approval from Lee County to re-route stormwater from the existing drainage inlet on Estero Boulevard into the resort's stormwater system so that roots from street trees on this block cannot interfere with any underground exfiltration trench. The conveyance of the Estero Boulevard drainage into the resort stormwater system will only be constructed if there are no adverse impacts or backflow into the existing system.
- e. No buffer vegetation may be planted in any public right-of-way or any sidewalk easement other than depicted on the Town approved Master Concept Plan.
- f. While the Town approved Master Concept Plan provides conceptual approval of under-building screening of parking areas, as required by LDC 34-992 (d)(1); a compliance and enforcement determination of the materials, technical specifications, and minimum opacity of the latticework around the ground story are subject to approval of the Town Manager or designee, as required by 34-992(c) and 34-992(d)(2) of the LDC. At the concurrence of the land owner, the Town Manager may allow occasional segments of latticework to be replaced by an opaque screen to allow works of art to be displayed in place of climbing vegetation.
- g. If at the end of the one (1) year plant establishment period from the end of the Temporary Certificate of Occupancy, the buffer plantings and climbing vegetation planted on the latticework do not visually

screen activities in the ground story, the Town Manager will require corrective action. Corrective actions may include, but are not limited to, different vegetation, different management techniques, and supplemental screening behind the latticework, among other practices. The property owner will take corrective action within 30-days of written notification from the Town regarding the deficiencies in the buffer. Failure to respond to any 30-day written notice shall constitute an appealable \$500 per incident per day civil violation.

- 5 The approved property development regulations for this CPD are presented in the attached Exhibit A, which will be substituted during the permitting process for the property development regulations that the LDC provides for the DOWNTOWN zoning district.
- 6 The approved schedule of uses for this CPD is limited to the following:

Parcel 1 (Bay Side) LODGING use group: Hotel Uses Accessory to ATM Administrative Offices Consumption on Premises, outdoor service and seating limited to locations on Sheets X-505-COP.01 & X-506-COP.02 Parking Lot, Accessory Subordinate Uses Temporary Uses, if permitted by Ch. 34 MARINE use group No Marina Uses	Parcel 2 (Gulf Side) LODGING use group: Hotel RETAIL use group: Recreation Facilities, Commercial (limited to 325 total people per day who are not staying at the hotel) Restaurant Commercial Accessory Uses: ATM Administrative Offices Consumption on Premises, outdoor service and seating limited to locations on Sheets X-506-COP.01 & X-507-COP.02 Subordinate Commercial Water-oriented Rentals MARINE use group: (if permitted by Chapter 27) Parasailing Operations Office Personal Watercraft Operations Office	Parcel 3 LODGING use group: Uses Accessory to Parking Lot, Accessory (the only use permitted on Parcel 3)
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7. The property owner is responsible for accounting and enforcement of the per day limitation of 325 non-resort guests at the aquatic venue or lesser number based upon Fire Department occupancy limitations; and, if requested, for providing records to the Town on demand for verification. Failure to provide records or limit non-hotel guests and/or hotel guests to the approved maximum limits per day shall constitute a \$500 per day per incident civil violation.
- 8 This CPD approves structures up to the following square-footage maximum on Parcels 1 and 2 which are entirely landward of the 1978 coastal construction control line and within the CPD zoning district boundary:
 - a. **Hotel**
 1. 250,783 SF, of which up to 96,085 SF could be guest units and up to 95,751 SF could be ground-story parking.
 2. 224 guest units to be on bay-side Parcel 1 (above parking) and up to 84,745 square feet could be guest units.
 3. 30 guest units to be on gulf-side Parcel 2 and up to 11,340 square feet.
 - b. **Restaurant on Parcel 2**
 1. 15,870 SF for a restaurant, of which 1,514 SF would be a bar; plus, an additional 1,364 SF for outdoor seating and an additional 2,000 SF for indoor storage
 - c. **Beach Club on Parcel 2**
 1. 3,786 SF for an ancillary restaurant
 2. 2,508 SF in an existing building for ancillary restrooms and lockers
 - d. **Pedestrian Bridges between Parcels 1- 2 if approved by Lee County**
 1. 2,691 SF for the access area required for a publicly accessible pedestrian bridge;
 2. 1,380 SF for the pedestrian bridge that is not included in the FAR.
- 9 Redevelopment and future uses on the subject property must be consistent with the attached Master Concept Plan as approved by the Town Council as part of this request. All prior Master Concept Plans, CPD zoning approvals, special conditions, and development agreements for the subject property are no longer valid. All development activities and future uses must comply with all the requirements of the Town of Fort Myers Beach Land Development Code at the time of Development Order approval, except as explicitly modified by this CPD approval. Lot lines

shown on existing plats must be vacated or replatted, as appropriate and as administratively determined by the Town Attorney, prior to issuance of Development Orders. If changes to this approval are requested, they will be reviewed as requests to formally modify this CPD. This CPD's new Master Concept Plan consists of these 26 sheets:

- a. X-G01 - Cover Sheet
- b. X-101-FLU - Future Land Use and Project Boundary
- c. X-103-BNDY.00 - Boundary Survey (1 of 2)
- d. X-103-BNDY.01 - Boundary Survey (2 of 2)
- e. X-104-DA - Developable Area Exhibit
- f. X-105-MCP.00- *Floor Area Ratio* First Floor
- g. X-106-MCP.01 - Floor Area Ratio Second Floor
- h. X-107-MCP.02- Floor Area Ratio Third Floor
- i. X-108-MCP.03 - Floor Area Ratio Fourth Floor
- j. X-109-MCP.00 - Master Concept Plan First Floor
- k. X-110-MCP.01 - Master Concept Plan Second Floor
- l. X-111-MCP.02 - Master Concept Plan Third Floor
- m. X-112-MCP.03 - Master Concept Plan Fourth Floor
- n. X-113-MCP.04 - Master Concept Plan Deviations and Notes
- o. X-114-MCP.05 - Master Concept Plan Building Height
- p. X-A201 -Exterior Elevations
- q. X-A202 -Exterior Elevations
- r. X-A203 - Exterior Elevations
- s. X-A301 - Building Sections
- t. X-501 - Parking Locations and Calculations
- u. X-502-RW.00 - Right-of-way and sidewalk/buffer plan
- v. X-503-RW.01 - Right-of-way and sidewalk/buffer plan
- w. X-504-RW.02 - Right-of-way and sidewalk/buffer plan
- x. X-505-COP.01 - Consumption on Premises Diagrams
- y. X-506-COP.02 - Consumption on Premises Diagrams Pedestrian Circulation
- z. X-507-VT-Visibility Triangles

- 10** A pedestrian bridge across Estero Boulevard is shown on the Master Concept Plan. Conceptual approval of this bridge is subject to the following requirements for design, approval, and operation:

- a. The pedestrian bridge must be constructed simultaneously with the buildings it connects.
 - b. The elevated terrace on the second story of the main resort building on Parcel 1 must include a public ADA compliant access for public use.
 - c. Visible publicly accessible stairwells and elevators on both sides of Estero Boulevard must connect the sidewalks to each end of the pedestrian bridge. The stairwell on Parcel 2 must provide access to publicly accessible restrooms in the restaurant building, with clear signage indicating the public's access and rights to use these restrooms and pedestrian bridge, if approved, without a fee or charge.
 - d. In order to guarantee the general public's permanent right to use the bridge and the adjoining stairways, elevators, and restrooms, the landowner must execute an instrument that guarantees this access in a form suitable to the Town Attorney.
 - e. Before constructing the bridge over Estero Boulevard, the landowner must obtain review and approval from Lee County and must enter into a formal agreement with Lee County regarding design, maintenance, liability, operations, future changes, and other relevant details. The bridge design must allow and not interfere with nor prevent all elements necessary for a traffic signal and grade level pedestrian crosswalk at the Estero Boulevard-Crescent Street intersection. If necessary, FDOT review and approval must be obtained.
 - f. All FDOT and Lee County approvals must be received by the applicant prior to approval by the Town. The Town's approval shall be limited to aesthetic and non-structural design.
- 11** Sheet X-109-MCP.00 of the Master Concept Plan identifies certain important features on Parcels 2 and 6 (the beach-side parcels) that will require separate critical actions by the Town and by the landowner at a later date. This sheet is being included in the Master Concept Plan with these understandings:
- a. As shown on Sheet X-105, the landowner intends to request the vacation of a narrow right-of way at the end of Crescent Street, plus the first 185 feet of Canal Street south of Estero Boulevard which is part of Town-maintained Beach Access #36. Understanding that the Town's Comprehensive Plan strictly limits vacations of rights-of-way in order to preserve future access to the water, the landowner has agreed to provide a net increase in public access by donating Parcel 6 to the Town and constructing on it a new public street replacing Canal Street. The new public street will also be providing beach access and public parking spaces on 67 feet wide new rectangular

right-of-way beginning at Estero Boulevard. The Town Manager or designee shall be responsible for design approval of the new street. The new street will be completed on or before twelve (12) months following the issuance of a Development Order.

- b. The landowner has also agreed to construct and dedicate a five-foot wide perpetual public access easement for a new pedestrian beach access at the "north" end of Parcel 2 that meets ADA accessibility requirements and the Town Manager's specifications as to design, surfacing and signage. The easement shall be constructed, completed, and open to the public on or before twenty-four (24) months following the issuance of the associated Development Order. During construction of the project the property owner shall maintain a minimum of one 25' wide ADA accessible beach access from Estero to the end of the property at or near the water.
- c. The landowner will execute instruments to complete donations, the easement(s) for new pedestrian beach access easement and Parcel 6, in a form suitable to the Town Attorney and will provide them to the Town Attorney, who will not record either instrument unless the Town Council formally vacates the two existing rights-of-way shown on Sheet X-105; and:
 - i. The landowner either completes the construction of the new street or allows continued public use of Canal Street or Temporary Beach Access until the new street is completed.
 - ii. The Town will not issue development orders for demolition, site work, or new buildings on Parcels 1 or 2 unless the Town agrees to vacate both rights-of-way and related or associated property transfers are executed.
 - iii. After the new street is constructed by the applicant and turned over to the Town, Parcel 6 will no longer be subject to any requirements of this CPD.

12 The beach club on Parcel 2 must meet these additional requirements:

- a. To allow the reduced building frontage on the south side of Estero Boulevard (see LDC 34-675), development order plans must demonstrate three view corridors from Estero Boulevard to the beach (two totaling 319 feet; one totaling five feet) that total at least 324 feet along Estero Boulevard.
- b. Any perimeter fence on the beach side of Estero Boulevard must be at least 80 percent transparent, must be placed within a landscaped planting area at least five (5) feet wide, and shall be maintained at a height of three (3) feet. If the Florida Building Code requires a taller fence at this location, the Fort Myers Beach Building Official shall adjust the fence height accordingly.

- c. A detailed lighting plan, including any lit signage, must be provided with the development order application for the beach club; this plan must comply with LDC requirements in 10-154(8) and 14-76 for sea turtle conservation.
- d. A detailed landscaping plan showing the location and type of all plantings, including beach plantings adjacent to the existing retaining wall, must be provided with the development order application for the beach club.
- e. Directional signage approved by the Town as to design, installation methodology, and location shall be erected along Estero Boulevard that advises the public of both new public beach accesses.
- f. The beach club and its ancillary uses may operate only from 7am to one hour after sunset, but never later than 9 pm. That is the Beach Clubs hours of operation unless otherwise temporarily altered in the Town's special event use regulations in Section 34-1264 of the LDC.
- g. To implement the applicant's commitment to limit access to the beach club to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.
- h. The beach club and aquatic venue shall provide no less than one security personnel per 200 guests.
- i. All necessary dune plantings and walkovers shall be provided in compliance with Town codes and ordinances.

13 The following transportation and access features are shown on the Master Concept Plan and are an integral part of this approval:

- a. All existing vehicular access points on Estero Boulevard shall be closed except the access to the one new public street on Parcel 6.
- b. The one and only access point on Crescent Street will be an entrance-only driveway near the intersection with Fifth Street, which will be the main entrance for resort guests.
- c. Access points on Fifth Street are limited to the one main exit for resort guests and a separate entrance and exit for service vehicles on Parcel 1, plus two existing driveways to the surface parking lot on Parcel 3.

~~**14** Prior to the Town issuing any development orders for demolition, site work, or new buildings on Parcel 2, the landowner must execute and record a restrictive covenant in favor of and enforceable by the Town in perpetuity that acknowledges that this CPD approval has consumed all~~

~~allowable density and intensity on Parcels 1, 2, 3, and 5 and that no **No** additional development may occur beyond that which is approved by this CPD **without prior approval of the Town Council**. Prior to issuance of a temporary or final certificate of completion on Parcel 2 (but not later than 36 months after commencing construction), the landowner must convey to the Town a perpetual conservation easement in a form acceptable to the Town Attorney, which after acceptance will be recorded in the Public Records of Lee County, over those portions of Parcels 2 and 3 on which structures or pavement are not constructed or proposed to be constructed under the Master Concept Plan adopted as part of this CPD. The intent of this condition is to limit in perpetuity the density and intensity of Parcels 2 and 3 to that which is approved by this CPD and to maintain all areas on which buildings and pavement are not constructed and as shown on the Master Concept Plan, only for outdoor recreation area on Parcel 2 and a single-level surface parking lot on Parcel 3, but specifically excluding any additional parking facilities, buildings, and other similar structures or any additional improvements **require that any future changes to this CPD must comply with the Fort Myers Beach Plan and LDC in effect at the time of any future application**.~~

- 15 Development order plans must identify the location of 359 off-street parking spaces within the area now identified for parking on Parcels 1 and 3. The public parking spaces to be constructed on Parcel 6 cannot be counted toward the 359 spaces reserved for resort parking.
 - a. None of the 359 spaces are eligible for joint-use agreements or sharing agreements that would allow any of these spaces to substitute for off-street parking that is required by the LDC for businesses located outside this CPD's Master Concept Plan.
 - b. Prior to the issuance of a Temporary Certificate of Occupancy, the applicant will also construct or provide 75 dedicated parking spaces at an off-site location along the trolley route from the Beach Park & Ride facility to be available for the entire resorts parking needs within 2.8 miles of Parcel 1.
 - c. Three or more years after issuance of the resort's certificate of occupancy, the applicant may request to modify this condition to eliminate some or all of these off-site parking spaces upon a convincing showing that this condition requires more parking spaces than are needed for the entire resorts parking needs.
 - d. Identify to the Town if any shared use parking agreements are currently in existence and will be terminated to meet this CPD condition.
- 16 Development order plans must demonstrate that vehicles can be accommodated by a multi-vehicle parking mechanism per parking spot. Valet parking must be managed so that vehicles are never stacked on Crescent Street or 5th Street waiting to access the valet area. The property owner shall install No Stop/Stand signs on Crescent and 5th

Street.

- 17** Individual signs may be placed on this site during and after development as may be allowed by the LDC regulations that are in effect at that time. Murals are permitted in compliance with LDC regulations.
- 18** Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:

 - a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on Sheets X-506-COP.01 and X-507-COP.02. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.
 - b. Alcoholic beverages and amplified music in the beach club are limited to 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m. Expansion of COP onto the sandy beach seaward of the seawall is prohibited.
 - c. Amplified music on the outdoor terrace on Parcel 1 is limited 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m.
 - d. Amplified music in the unenclosed hotel restaurant and bar on Parcel 2 are limited to 7:00 a.m. to midnight.
 - e. Alcoholic beverages may not be served at locations other than those shown on the Master Concept Plan unless approved by special use permit, special exception or by administrative approval, as provided in 34-1264 of the LDC.
- 19** Prior to applying for a permit for the stormwater management system from the SFWMD, the landowner shall evaluate the receiving of drainage from the intersection of Crescent and Fifth for suitability and consistency with SFWMD requirements. Provided these two components can be combined under those requirements, the landowner will design and construct the project to receive stormwater from the intersection of Crescent Street and Fifth Street into and through the project's stormwater system, including cost of upsizing the project stormwater system. In order to be considered feasible, any routing of stormwater from the intersection of Crescent and Fifth Streets must accommodate the project's design as approved by this CPD and it shall be borne by the property owner. The property owner will provide copies of the SFWMD permit application, and all subsequent responses to requests for additional information, to the Town's stormwater consultant for review and concurrent with filing with the **SFWMD**.

- 20** In order to provide an additional view corridor along the approach to the Town from the Matanzas Pass Bridge, the applicant has offered, and the Town has accepted the following changes to the Master Concept Plan:
- a. No buildings will be constructed on Parcel 3 in perpetuity. Parcel 3 shall remain as a 21-space surface parking lot for the resort because all development rights on Parcel 3 are being used on Parcels 1 and 2. ~~Parcel 3 will be included in the covenants and conservation easement described in Condition 14.~~ Landscape buffers shall be done in accordance with MCP X-504-RW.02.
 - b. No buildings will be constructed on Parcel 4 by the applicant and the existing building will be removed. Parcel 4 will be donated by the applicant to the Town for civic, public purposes and will include a reverter in the event the parcel is not used for such civic, public purposes. The demolition and re-grading of the property will be completed no later than September 30th, 2018. The Town shall receive Parcel 4 within 60 calendar days of the issuance of all necessary approvals related to the development order and approvals of the pedestrian bridge. After the existing building is removed by the applicant and the property transfer is completed, Parcel 4 will no longer be subject to any requirements of this CPD. Demolition of Parcel 4 may be completed prior to development order being issued.
- 21** Barring a direct hurricane or other Acts of God and governmental-related delays, Parcel 1 and the Parcel 1 main hotel shall be completed and open for operation within three years of the issuance of a development order approval. All other portions, phases, and uses shall be in operation within five years of issuance of a development order approval. A Development Order application for development of Parcel 1 shall be submitted no later than 270 calendar days from effective date of the rezoning ordinance.
- 22** Additional approvals of special events are allowed. Application for such special event approvals shall be submitted through the Town's adopted Special Event processes and may temporarily alter hours of operation, amplified music limits, and public user capacity, among other items.
- 23** Bicycle racks for public use will be provided as shown on the Master Concept Plan. All bicycles and similar alternative transportation options shall be provided within the approved development footprint. Operations of any bicycle loan business or operation shall require the returning of bicycles to the CPD properties on a daily basis; as well as comply with Town Codes and provide education materials about Town codes and regulations to bicycle users.
- 24** Construction staging shall be authorized when in compliance with all applicable Town codes, except that concrete delivery/pumping for the building's foundations and terrace may occur no earlier than 4:00 am. No staging shall be permitted on Parcel 4 or Parcel 6 after donation to the

Town. No other approvals are inferred from approval of the CPD. The landowner or developer shall be responsible for submittal of any requests for additional staging or construction management approvals from the Town Council.

- 25** Any violation of the CPD conditions of approval or deviations shall constitute a \$500 per day per incident civil violation.
- 26** The applicant has offered to provide residents of the Fort Myers Beach community a "Discount Plan," which provides a 25 percent discount on food, alcohol and non-alcohol beverages, Family Beach Club Admission, and retail store purchases, to anyone with a valid FL Driver's License with a home address in zip code 33931.
- 27** Per LDC Section 34-216(b)(5), the revised Master Concept Plan must be submitted to the director reflecting all modifications to the deviations and conditions as made herein by the Town Council.

Findings Regarding the Conditions

- 1.** All recommended special conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: CPD AMENDMENT

CASE NUMBER: CPD20230227

CASE NAME: 1170 Estero Blvd (incl. all associated Margaritaville CPD properties); requesting an amendment of Ord. 18-04 'Conditions of Approval' #6; #12 (f) and (g); and #18 (a) and (b).

COUNCIL HEARING DATE: January 9th, 2024, at 9 AM

STAFF RECOMMENDATION: N/A

**PREPARED/
SUBMITTED BY:** Jason Smalley- Senior Planner

I. APPLICATION SUMMARY

Applicant/Owner: TPI-FMB LLC

Request: The applicant is requesting an amendment of Ord. 18-04 'Conditions of Approval' #6, 12(f) & (g) and 18(a) & (b), extending hours of operation an additional 2 hours for the Beach Club and its ancillary uses from 7am to 11pm, and limiting amplified music past 10pm while clarifying that the Town's noise ordinance would apply to the new hours; allowing for other outdoor areas covered by the Consumption on Premises (COP) approval to be utilized for private events when the aquatic venue is closed; change 12(g) references from "beach club" to "aquatic venue;" and correct page references to the COP areas in the Master Concept Plan (MCP).

Subject property: See attached Master Concept Plan

Physical Address: 1170, 1180/ 1192, 1204/ 1206 Estero Blvd; 251 Crescent St; 1150 Fifth St.; and Unaddressed parcels

STRAP #: 24-46-23-W3-00205.0070 (MCP parcel #3); 24-46-23-W3-00006.0000 (MCP parcel #1); 24-46-23-W3-00206.0060 (MCP parcel #1); 24-46-23-W3-00009.0000 (MCP parcels # 2 and #5); 19-46-24-W4-U0496.2608 (MCP parcel #2) and 19-46-24-W4-U0498.2607 (MCP parcels #2 and #6)

FLU: Pedestrian Commercial

Zoning: Commercial Planned Development (CPD)

Adjacent zoning and land uses:

North: COMMERCIAL PLANNED DEVELOPMENT (CPD)
Hotel

South: DOWNTOWN
Crescent Beach Park

East: DOWNTOWN
Residential/ Hotel

West: DOWNTOWN
Commercial/ Times Square

II. BACKGROUND AND ANALYSIS

Background:

Original CPD Approval: May 21st, 2018 (Ord. 18-04)

- 27 Conditions of Approval included

Amendment to CPD (Ord. 23-09): August 7th, 2023

- Amendment to Condition of Approval #14, removing language which forbade the development of parcels 1, 2, 3 and 5, allowing for future Councils to consider construction in those areas in conformity with the Comprehensive Plan and LDC.

Analysis:

Condition of Approval #6 and #18(a): Minor correction of page references in the Master Concept Plan detailing the approved COP areas. Staff has confirmed that the

referenced Master Concept Plan (dated May 21st, 2018; Morris-Depew Assoc., Inc.) pages were incorrectly cited in multiple places within prior ordinances.

Condition of Approval #12 (f) & (g):

- **12(f):** While retaining the daily limits on non-resort guests at the aquatic venue on parcel 2, the applicant is requesting the ability to utilize the COP areas defined in the MCP, for private events after the aquatic venue closes.

The applicant is proposing to limit amplified music to no later than 10pm on parcel 2, except that amplified music may be played from 7am to 12am-midnight in the unenclosed hotel restaurant and bar.

The applicant is proposing that limits on noise should be addressed through the Town's noise ordinance (sec. 14-23, Table-1)

- **12(g):** This change seems to clarify that the aquatic venue is subject to the limits of 325 non-guest users, rather than the "Beach Club." It's unclear to staff if this change impacts other limitations on parcel 2, or whether the terms "Beach Club" and "Aquatic Venue" have been used interchangeably.

Condition of Approval #18(b): The proposed changes would extend the sale of alcoholic beverages within the approved COP areas to 11pm to match their proposed amendment to Condition of Approval #12(f). The removal of language regarding amplified music is also addressed by #12(f).

II. LPA OUTCOME

At the December 19th LPA hearing the LPA made a motion to recommend approval of the ordinance amendments with the following conditions:

- 1) #6 and 18(a) recommend approval as requested, they are needed corrections.
- 2) #12(f) & (g) which pertain to the extended hours and amplified music are approve with recommendation of conditions:
 - a. A mapped plan of how mitigation will occur for private events at the venue,
 - b. Define private event.
 - c. Asked that the applicant ensure compliance with sea turtle ordinance for extended hours and lighting.
 - d. Asked for a clear updated map, identifying the aquatic venue/pool and beach club areas.
 - e. Provide capacity limit for private events.
 - f. Allow amplified music to play till 10 PM and operation till 11.

- 3) Recommend approval of 18(a) & (b) for extension of COP with the preceding conditions.

The final vote to recommend approval was 6-0 with one member abstaining from the vote.

III. EXHIBITS

- A. Complete application
 - a. Applicant-proposed ordinance language
- B. Approved Master Concept Plan pages X-505-COP.01 & X-506-COP.02

Exhibit 6-5
TPI-FMB CPD AMENDMENT

NARRATIVE

INTRODUCTION

Margaritaville CPD Ord.# 23-09, Condition #7, limits non-resort guest use of the aquatic venue on Parcel 2 to a maximum 325 non-resort guests:

7. The property owner is responsible for accounting and enforcement of ***the per day limitation of 325 non-resort guests at the aquatic venue*** or lesser number based upon Fire Department occupancy limitations; and, if requested, for providing records to the Town on demand for verification. Failure to provide records or limit non-hotel guests and/or hotel guests to the approved maximum limits per day shall constitute a \$500 per day per incident civil violation.

During hours when the aquatic venue on Parcel 2 is closed, the other beautiful outdoor areas of the beach club would otherwise be vacant. TPI FMB proposes to use those other beach club outdoor areas for private events (including food and beverage services within the permitted COP areas on the MCP for Parcel 2) and to moderately increase the hours of operation from 9:00 PM to 11:00 PM. Condition #7 remains unchanged, but this requires amending Ord.#23-09, Conditions #12.f. and 12.g. and 18.a. and 18.b. (and Condition #6 as noted at the end of this Narrative)[See additions **bold underlined**; deletions **cross-hatched**]:

12. *The beach club on Parcel 2 must meet these additional requirements:*

...

- f. *The beach club and its ancillary uses may operate only from 7 am to 11 pm. **The aquatic venue is limited by Condition 7 to 325 non-resort guests. When the aquatic venue is closed, the other outdoor patios and related areas of the Parcel 2 beach club (limited to locations shown on the MCP as COP areas) may be used for private events. No amplified music is permitted past 10 PM except as provided in Condition 18.d. Since this venue is open air, with regard to music or noise the Town's Noise Ordinance (Code of Ordinances §14-23; Table-1) will be enforced.**~~one hour after sunset, but never later than 9 pm. That is the Beach Club's hours of operation. unless otherwise temporarily altered in the Town's special event use regulations in Section 34-1264 of the LDC.~~*

- g. *To implement the applicant's commitment to limit access to the aquatic venue beach club to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.*

....

18. Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:

*a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on **Sheets X-505-COP.01 and X-506-COP.02** ~~Sheets X-506-COP.01 and X-507-COP.02~~. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.*

*b. Alcoholic beverages ~~and amplified music~~ in the beach club are limited to 7:00 a.m. to **11:00 p.m.** ~~one hour after sunset, but not later than 9:00 p.m.~~ Expansion of COP onto the sandy beach seaward of the seawall is prohibited.*

[The remainder of Condition 18 is unchanged]

EXPLANATION: Conditions 12.f. and 12.g. and 18.a. and 18.b.

TPI recently requested changes to the Margaritaville CPD due to Hurricane Ian changed circumstances with the devastation to the community and impacts on the local economy. Those changes were approved in Ord. #23-09. Recently TPI noticed an inconsistency in the reference to the MCP plan pagination in Condition #6 which needs to be addressed. At the same time, there is ambiguity about the private event use of outdoor beach club areas after the aquatic venue is closed which operational issues should also be clarified.

As TPI is getting closer to opening and operating Margaritaville they are addressing some of the specific operational conditions related to the beach club, restaurants, and ancillary uses. Once it is completed, the beach club will represent a magnificently landscaped area, perfectly suited for evening receptions for various Southwest Florida civic, corporate, community, and other similar groups seeking a venue for various social gatherings. On those days, the beach club and its food and beverage services could be made available between the hours of 5 PM (after which the pool and aquatic venue would be closed) to 11 PM with the further limitation that no amplified music would be available past 10 PM. Since this venue is open air, regarding music or noise the Town's Noise Ordinance (Town of Fort Myers Beach Code of Ordinances §14-23; Table-1) will be enforced.

Presently Condition 12.f. requires the closure of the beach club after 9 PM unless special events are requested consistent with LDC 34–1264. As a practical matter limiting the use of this beautiful venue only until 9 PM serves no practical purpose. The beach club resource is in the Commercial District of the Town of Fort Myers Beach within an area that will already be actively used after 9 PM. Allowing it to be open until 11 PM will be consistent with the other restaurant and bar activities that occur in this commercial part of the town and will complement the other evening activities in this area.

A restaurant is already located there and will be active during the same hours. The COP areas have already been identified in the Master Concept Plan and will remain consistent. Allowing the flexibility for the additional two hours of operation will more efficiently use the beautiful resources of the beach club as a complement to other Times Square pedestrian-oriented activities. There will be no additional impact to the area since the parking for the beach club and ancillary uses is already provided for in the CPD.

Minor clarification amendments to Conditions #12 and 18 would allow for this [deletions-crosshatched; additions **bold underlined**]:

12. *The beach club on Parcel 2 must meet these additional requirements:*

...

f. *The beach club and its ancillary uses may operate only from 7am to **11 pm. The aquatic venue is limited by Condition 7 to 325 non-resort guests. When the aquatic venue is closed the other outdoor patios and related areas of the Parcel 2 beach club (limited to locations shown on the MCP as COP areas) may be used for private events. No amplified music is permitted past 10 PM except as provided in Condition 18. d. Since this venue is open air, with regard to music or noise the Town's Noise Ordinance (Code of Ordinances §14-23; Table-1) will be enforced.**~~one hour after sunset, but never later than 9 pm. That~~*

~~is the Beach Club's hours of operation, unless otherwise temporarily altered in the Town's special event use regulations in Section 34-1264 of the LDC.]~~

- g. *To implement the applicant's commitment to limit access to the **aquatic venue beach club** to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.*

■ ■ ■

18. Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:

- a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on **Sheets X-505-COP.01 and X-506-COP.02** ~~Sheets X-506-COP.01 and X-507-COP.02~~. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.
- b. ~~Alcoholic beverages and amplified music~~ in the beach club are limited to 7:00 a.m. to **11:00 p.m.** ~~one hour after sunset, but not later than 9:00 p.m.~~ Expansion of COP onto the sandy beach seaward of the seawall is prohibited.

[The remainder of Condition 18 is unchanged]

////////////////////////////////////

[Clean Version – Clarified Conditions 12 and 18]

12. The beach club on Parcel 2 must meet these additional requirements:

...

- f. The beach club and its ancillary uses may operate only from 7am to 11 pm. The aquatic venue is limited by Condition 7 to 325 non-resort

guests. When the aquatic venue is closed the other outdoor patios and related areas of the Parcel 2 beach club (limited to locations shown on the MCP as COP areas) may be used for private events. No amplified music is permitted past 10 PM. Since this venue is open air, with regard to music or noise the Town's Noise Ordinance (Code of Ordinances §14-23; Table-1) will be enforced.

- g. To implement the applicant's commitment to limit access to the aquatic venue to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.

...

18. Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:

- a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on Sheets X-505-COP.01 and X-506-COP.02. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.
- b. Alcoholic beverages in the beach club are limited to 7:00 a.m. to 11:00 p.m. Expansion of COP onto the sandy beach seaward of the seawall is prohibited.

EXPLANATION: Condition #6

As noted previously above, while reviewing the recent amendments to the Margaritaville CPD ordinance TPI also recognized that in Condition 6 the references to the MCP pages related to Consumption On Premises (COP) were inaccurate and ought to be changed so that the correct references in the Use for Parcel 1 are also correctly

referenced for the COP Use on Parcel 2 (which, in Ord.#23-09, do not accurately reflect the correct MCP pages). Those proposed changes are shown in the condition below:

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

6. The approved schedule of uses for this CPD is limited to the following:

Parcel 1 (Bay Side)	Parcel 2 (Gulf Side)	Parcel 3
LODGING use group:	LODGING use group:	LODGING use group:
Hotel	Hotel	Uses Accessory to
Uses Accessory to	RETAIL use group:	Parking Lot, Accessory
ATM	Recreation Facilities,	(the only use
Administrative Offices	Commercial (limited to 325	permitted on Parcel
Consumption on	total people per day who are	3)
Premises, outdoor	not staying at the hotel)	
service and seating		
limited to locations on	Restaurant	
Sheets X-505-COP.01	Commercial Accessory Uses:	
& X-506- COP.02	ATM	
Parking Lot, Accessory	Administrative Offices	
Subordinate Uses	Consumption on Premises,	
Temporary Uses, if	outdoor service and	
permitted by Ch. 34	seating limited to	
MARINE use group	locations on Sheets <u>X-</u>	
No Marina Uses	<u>505-COP.01 & X-506-</u>	
	<u>COP.02</u>	
	X-506-COP.01 & X-507-	
	COP.02	
	Subordinate Commercial	
	Water-oriented	
	Rentals	
	MARINE use group:	
	(if permitted by Chapter 27)	
	Parasailing Operations	
	Office Personal Watercraft	
	Operations Office	

LDC JUSTIFICATION

According to LDC Section 34-1(a) the purpose and intent of the Land Development Code is:

... to encourage and promote, in accordance with present and future needs, the safety, health, order, convenience, prosperity, and general welfare of the citizens of the Town of Fort Myers Beach, to recognize and promote real property rights, and to provide:

- (1) For efficiency and economy in the process of development;
- (2) For the appropriate and best use of land; ...

(Emphasis supplied). When considering rezonings LDC Section 34-85(b) calls for the Town Council to consider (among others):

- (1) Whether there exists an error or ambiguity which must be corrected.
- (2) Whether there exist changed or changing conditions which make approval of the request appropriate.

[Particularly Condition 6, discussed last below, makes references to the MCP pages related to Consumption On Premises (COP) that are inaccurate and ought to be changed so that the correct COP references shown in the Use for Parcel 1 are also correctly referenced for the COP Use on Parcel 2. Additionally, there is ambiguity in Condition 12(f) & (g) about whether the outdoor areas and related services of the beach club can be used for private events when the aquatic venue is closed.]

...

- (8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

[The performance and locational standards were demonstrated to be met when the CPD was originally approved. The request proposed is simply to more efficiently use the approved facilities by moderately expanding the hours of operation to better use the approved beach club facilities.]

...

- (11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

[TPI submits that the proposal to allow the beach club facilities to remain open for another two hours is consistent with and complementary to the evening activities expected throughout the pedestrian-oriented Times Square beachside restaurant and recreational area.]

- (12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

[As previously noted, the activities have already been shown not to place undue burdens on the transportation and other services and facilities, and the proposed change to the hours of operation will simply allow the use of an existing activity site in this pedestrian-oriented area.]

- (13) For planned development rezonings, see § 34-216 for additional considerations.

LDC §34-216(a):

- (2) The recommendation made to the town council must be supported by the guidelines set forth in § 34-85 of this chapter. In addition, the findings must address whether the following criteria can be satisfied:
- a. The proposed use or mix of uses is appropriate at the subject location;
 - b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
 - c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;
 - d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
 1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

POLICY 4-B-6 "PEDESTRIAN COMMERCIAL: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard)

Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. ... [Emphasis supplied]

POLICY 4-C-3 COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply:

...

- ii. Where new or expanded commercial uses are encouraged, as in the "Pedestrian Commercial" category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.

[The Margaritaville Resort property is located largely in the Pedestrian Commercial FLU Category. Policies 4-B-6 and 4-C-3 call for the property to contribute to the pedestrian oriented public realm in this activity center in close proximity to Times Square. These new beachfront recreational and entertainment facilities are uniquely situated to provide those kinds of pedestrian-oriented services in a complementary fashion to the other pedestrian oriented activities and services located in the Times Square area. Allowing the hours of operation to more closely match the activity level of the Times Square area just makes good sense and efficient use of the existing facilities.]

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category. ***[N/A for this amendment]***
3. Policy 4-C-4 on building heights taller than the standard height limit. ***[N/A for this amendment]***
4. Policy 4-C-8 on density transfers. ***[N/A for this amendment]***
5. Policy 4-E-1 on pre-disaster buildback. ***[N/A for this amendment]***

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.
[N/A for this amendment]

CONCLUSION

In conclusion, TPI submits that these minor changes will correct an existing error or ambiguity and will remain consistent with the Town's LDC and Comprehensive Plan as well as being consistent with the overall theme and concept approved in the Margaritaville CPD. TPI respectfully urges the Town to approve the changes proposed.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

1170, 1180/1192 Estero Blvd., portions of Estero Blvd., right-of-way and access undetermined,
Site Address: more or less (See attached location map).

STRAP Number: Parcels 2 & 5: 19-46-24-W4-0140B.0070, 19-46-24-W4-U0491.2610, 19-46-24-W4-U0494.2609, 19-46-24-W4-U0496.2608, 19-46-24-W4-U0498.2606, 24-46-23-W3-00009.0000

Applicant: TPI-FMB, LLC - Steven C. Hartsell, Authorized Applicant Phone: 239-336-6244

Contact Name: c/o Steven C. Hartsell, Esquire Phone: 239-336-6244

Email: stevehartsell@paveselaw.com Fax: 239-332-2243

Current Zoning District: Commercial Planned Development (CPD)

Future Land Use Map (FLUM) Category: Pedestrian Commercial FLU

FLUM Density Range: See Ordinance #23-09 Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

- ☐ Special Exception
☐ Variance
☐ Conventional Rezoning
☒ Planned Development ☒ Commercial ☐ Residential
☐ Master Concept Plan Extension
☐ Appeal of Administrative Action
☐ Vacation of Platted Right-of-way and Easement
☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

- PH-A
PH-B
PH-C
PH-D
PH-E
PH-F
PH-G
attach on separate sheet

PART I – General Information

A. **Applicant***: TPI-FMB, LLC - Steven C. Hartsell, Authorized Applicant Phone: 239-336-6244

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: Post Office Drawer 1507, Fort Myers, FL 33902-1507

Email: stevehartsell@paveselaw.com Fax: 239-332-2243

Contact Name: Steven C. Hartsell, Esquire Phone: 239-336-6244



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Steven C. Hartsell, Esquire Phone: 239-336-6244
Address: Pavese Law Firm, Post Office Drawer 1507, Fort Myers, FL 33902-1507
Email: stevehartsell@paveselaw.com Fax: 239-332-2243

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: N/A Phone: _____
Address: _____
Email: _____ Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☒ Amendment. List the project number: DCI17-001
- ☐ Extension/reinstatement of Master Concept Plan. List project number: type text here



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical
presence OR ____ online notarization, this ____ day of _____, 20____, by
_____, ☐ who is personally known to me OR ☐ who has produced
_____ as identification.

Notary Public Signature

PART V Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☒ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

TPI-FMB, LLC, a Florida limited liability corporation
Owned by: Torgerson Properties, Inc., a Minnesota for profit corporation
Thomas R. Torgerson, Manager, 103 15th Ave. NW #200, Willmar, MN 56201
John Damemann, 100% owner of Torgerson Properties, Inc.

80.9%

TPI-FMB, LLC, a Florida limited liability corporation
Owned by: TPI-FMB Investment, LLC, a Florida limited liability corporation
Thomas R. Torgerson, Manager, 103 15th Ave. NW #200, Willmar, MN 56201
Thomas R. Torgerson, 100% owner of TPI-FMB Investment, LLC

19.1%

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

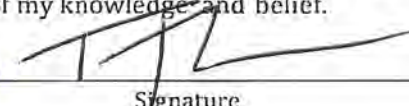
Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

✓ 

Signature

TPI-FMB, LLC, a Florida limited liability company
Thomas R. Torgerson, Manager

Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Thomas R. Torgerson (name), as Manager (title)
of TPI-FMB, LLC, a Florida limited liability corporation (company), swear or affirm under oath, that I am the
owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

TPI-FMB, LLC, a Florida limited liability corporation
Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

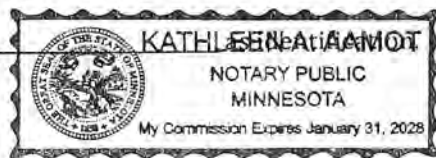
Thomas R. Torgerson
Typed or Printed Name

Manager
Title

10-27-23
Date

STATE OF Minnesota COUNTY OF Kandiyohi

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 27th day of October, 2023, by Thomas R. Torgerson, ☒ who is personally known to me OR ☐ who has produced



Kathleen A. Aamot
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W4-0140B.0070, 19-46-24-W4-U0491.2610, 19-46-24-W4-U0494.2609, 19-46-24-W4-U0496.2608, 19-46-24-W4-0498.2606, 24-46-23-W3-00009.0000

Property Address: 1170, 1180/1192 Estero Blvd., portions of Estero Blvd., right-of-way and access undetermined, more or less (See attached location map)

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

**COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING**

C. Property Dimensions:

Width (please provide an average width if irregular in shape) _____ +/- 395.00 feet

Depth (please provide an average width if irregular in shape) _____ +/- 301.09 avg feet

Frontage on street: +/- 395.00 feet. Frontage on waterbody: 0.00 feet

Total land area: +/- 1.80 ☒ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

West on San Carls Blvd. across the Sky Bridge. Continue on San Carlos Blvd. until it curves to the left, transitioning into Estero Blvd. Parcels 2 & 5 are on the right-hand of Estero Blvd. just beyond the pedestrian overpass for the Margaritaville resort currently under construction.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☒ Attach a map showing the surrounding property owners as Exhibit 6-7.

☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density

☐ Mixed Residential

Boulevard

☒ Pedestrian Commercial

☐ Marina

Recreation

☐ Wetlands

☐ Platted Overlay

DESCRIPTION - PARCEL NO. 2

PARCEL OF LAND LYING IN PARTIALLY IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND PARTIALLY IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, SAID PARCEL ENCOMPASSING UNPLATTED LANDS, PORTIONS OF "CRESCENT PARK", INCLUDING A PORTION OF CANAL STREET AND THE 12-FOOT-WIDE STRIP OF LAND SHOWN ALONG THE WEST SIDE OF LOTS 2, 3, 6, AND 7, BLOCK B, ON SAID PLAT OF "CRESCENT PARK", AS RECORDED IN PLAT BOOK 4, PAGE 39, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF BLOCK "E", CRESCENT PARK ADDITION, AS RECORDED IN PLAT BOOK 4, PAGE 46, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID CORNER LYING AT THE INTERSECTION OF THE SECTION LINE COMMON TO SAID SECTIONS 19 AND 24 AND THE NORTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD AS SHOWN ON THE SAID PLAT OF "BUSINESS CENTER"; THENCE S.0°41'08"E. ALONG THE SAID SECTION LINE, A DISTANCE OF 53.15 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID ESTERO BOULEVARD AND THE POINT-OF-BEGINNING OF THIS DESCRIPTION; THENCE S.70°35'51"E. A DISTANCE OF 270.05 FEET TO A POINT ON THE NORTH LINE OF LOT 4, BLOCK "A" OF SAID "CRESCENT PARK"; THENCE S.19°24'09"W. A DISTANCE OF 174.90 FEET TO A POINT ALONG THE COASTAL CONSTRUCTION SET-BACK LINE AS DESCRIBED IN PLAT BOOK 31, PAGE 1 THROUGH 21, INCLUSIVE, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE N.67°11'13"W ALONG SAID SET-BACK LINE, FOR A DISTANCE OF 393.39 FEET; THENCE N.19°24'24"E. FOR A DISTANCE OF 151.50 FEET TO AN INTERSECTION WITH THE SAID SOUTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD; THENCE S.70°35'51"E. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 122.63 FEET TO THE SAID POINT-OF-BEGINNING OF THIS DESCRIPTION.

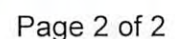
CONTAINING 1.47 ACRES, MORE OR LESS.

DESCRIPTION - PARCEL NO. 5

PARCEL OF LAND LYING IN PARTIALLY IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND PARTIALLY IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, SAID PARCEL ENCOMPASSING UNPLATTED LANDS, PORTIONS OF "CRESCENT PARK", INCLUDING A PORTION OF CANAL STREET AND THE 12 FOOT WIDE STRIP OF LAND SHOWN ALONG THE WEST SIDE OF LOTS 2, 3, 6 AND 7, BLOCK B, ON SAID PLAT OF "CRESCENT PARK", AS RECORDED IN PLAT BOOK 4, PAGE 39, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF BLOCK "E", CRESCENT PARK ADDITION, AS RECORDED IN PLAT BOOK 4, PAGE 46, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID CORNER LYING AT THE INTERSECTION OF THE SECTION LINE COMMON TO SAID SECTIONS 19 AND 24 AND THE NORTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD AS SHOWN ON THE SAID PLAT OF "BUSINESS CENTER"; THENCE S.0°41'08"E. ALONG THE SAID SECTION LINE, A DISTANCE OF 53.15 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID ESTERO BOULEVARD ; THENCE S.70°35'51"E. A DISTANCE OF 337.05 FEET TO THE NORTHEAST CORNER OF LOT 3, BLOCK "A" OF SAID "CRESCENT PARK"; THENCE S.19°24'09"W.

CONTAINING 0.33 ACRES, MORE OR LESS.



**DESCRIPTION
PARCEL NO. 1**

PARCEL OF LAND LYING IN SECTION 14, TOWNSHIP 16 SOUTH, RANGE 23 EAST, TOWN OF FORT MYERS BEACH, ESTERO ISLAND, LEE COUNTY, FLORIDA, SAID PARCEL ENCOMPASSING UNPLATTED PORTIONS OF "BUSINESS CENTER" INCLUDING PART OF CENTER STREET, ESTERO BOULEVARD, AS SHOWN ON MAP OF SAID "BUSINESS CENTER" RECORDED IN PLAT BOOK 4, PAGE 126, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF BLOCK "C" CRESCENT PARK ADDITION, AS RECORDED IN PLAT BOOK 4, PAGE 126, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID CORNER LYING AT THE INTERSECTION OF THE SECTION LINE COMMON TO SAID SECTIONS 19 AND 24 AND THE NORTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD AS SHOWN ON THE SAID PLAT OF "BUSINESS CENTER" THENCE N 70°35'17" E, ALONG SAID NORTHERLY RIGHT-OF-WAY OF ESTERO BOULEVARD, A DISTANCE OF 77.77 FEET TO THE POINT-OF-BEGINNING OF THIS DESCRIPTION OF PARCEL NO. 1, THENCE CONTINUE N 70°35'17" E, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 21.16 FEET, THENCE S 87°35'17" E, A DISTANCE OF 122.18 FEET, THENCE S 70°33'27" W, A DISTANCE OF 30.10 FEET, THENCE N 10°24'35" E, A DISTANCE OF 33.15 FEET TO THE MOST SOUTHERLY CORNER OF LOT 7, BLOCK 8, OF SAID "BUSINESS CENTER" THENCE N 70°35'17" E, ALONG THE RIGHT-OF-WAY LINE OF LOT 7, BLOCK 8, A DISTANCE OF 163.65 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 1, THENCE S 20°12'15" W, ALONG THE SOUTHWESTERLY LINE OF SAID LOT 1, BEING ALSO THE NORTHEASTERLY LINE OF LOT 1, SAID BLOCK 8, A DISTANCE OF 40.34 FEET TO AN INTERSECTION WITH THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF 18TH AVENUE, AS SHOWN ON SAID PLAT OF "BUSINESS CENTER" THENCE N 47°07'31" E, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 204.31 FEET, THENCE N 20°12'15" E, CONTINUING ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 16.41 FEET TO THE MOST SOUTHERLY CORNER OF TRACT 1, AS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 1184, PAGE 128, OF SAID LEE COUNTY PUBLIC RECORDS, THENCE ALONG THE EASTERLY BOUNDARY OF SAID RIGHT-OF-WAY TAKING FOR THE NEXT TWO COURSE NORTH-EASTERLY ALONG AN ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 209.85 FEET, A CENTRAL ANGLE OF 70°14'27" E, AND WHOLE CHORD BEARING N 31°34'35" E, FOR A DISTANCE OF 74.85 FEET, HAVING AN ARC LENGTH OF 79.05 FEET TO A POINT-OF-REVERSE CURVATURE OF A CURVE TO THE RIGHT, THENCE ALONG AN ARC OF SAID CURVE, HAVING A RADIUS OF 151.50 FEET, A CENTRAL ANGLE OF 41°10'22" E, AND WHOLE CHORD BEARING N 41°02'27" E, FOR A DISTANCE OF 103.74 FEET, HAVING AN ARC LENGTH OF 104.77 FEET TO AN INTERSECTION WITH THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF FOURTH STREET, AS SHOWN ON SAID PLAT OF "BUSINESS CENTER" THENCE S 41°32'42" E, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 45.48 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF SAID RIGHT-OF-WAY TAKING TRACT 1, AS DESCRIBED IN OFFICIAL RECORDS BOOK 1215, PAGE 116, OF THE SAID LEE COUNTY PUBLIC RECORDS, THENCE SOUTHERLY ALONG THE SAID WESTERLY BOUNDARY OF TRACT 1, FOR THE NEXT 1/4 (1) COURSE, S 10°14'16" E, A DISTANCE OF 44.80 FEET, THENCE S 70°35'17" E, A DISTANCE OF 114.77 FEET, THENCE S 10°14'16" E, A DISTANCE OF 181.20 FEET, THENCE S 47°43'15" E, A DISTANCE OF 133.59 FEET, THENCE S 44°20'19" W, A DISTANCE OF 42.18 FEET TO THE SAID POINT-OF-BEGINNING OF THIS DESCRIPTION, CONTAINING 2.71 ACRES, MORE OR LESS.

**DESCRIPTION
PARCEL NO. 2**

PARCEL OF LAND LYING IN PARTIALLY IN SECTION 19, TOWNSHIP 16 SOUTH, RANGE 24 EAST, AND PARTIALLY IN SECTION 24, TOWNSHIP 16 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, SAID PARCEL ENCOMPASSING UNPLATTED PORTIONS OF "CRESCENT PARK" INCLUDING A PORTION OF CANAL STREET AND THE 12 FOOT WIDE STRIP OF LAND SHOWN ALONG THE WEST SIDE OF LOTS 2, 3, 8 AND 7, BLOCK 8, ON SAID PLAT OF "CRESCENT PARK" AS RECORDED IN PLAT BOOK 4, PAGE 38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF BLOCK "C" CRESCENT PARK ADDITION, AS RECORDED IN PLAT BOOK 4, PAGE 38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID CORNER LYING AT THE INTERSECTION OF THE SECTION LINE COMMON TO SAID SECTIONS 19 AND 24 AND THE NORTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD AS SHOWN ON THE SAID PLAT OF "BUSINESS CENTER" THENCE S 10°14'16" E, ALONG THE SAID SECTION LINE, A DISTANCE OF 53.15 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID ESTERO BOULEVARD AND THE POINT-OF-BEGINNING OF THIS DESCRIPTION, THENCE S 70°35'17" E, A DISTANCE OF 372.05 FEET TO A POINT ON THE NORTH LINE OF LOT 1, BLOCK "A" OF SAID "CRESCENT PARK" THENCE S 10°14'16" E, A DISTANCE OF 114.80 FEET TO A POINT ALONG THE SECTION LINE OF SAID BLOCK "A" AS DESCRIBED IN PLAT BOOK 21, PAGE 1, THROUGHOUT 21, INCLUDING PUBLIC RECORDS OF LEE COUNTY, FLORIDA, THENCE N 71°11'37" W, ALONG SAID SETBACK LINE, FOR A DISTANCE OF 38.13 FEET, THENCE N 10°24'35" E, FOR A DISTANCE OF 151.30 FEET TO AN INTERSECTION WITH THE SAID SOUTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD, THENCE S 70°35'17" E, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 122.18 FEET TO THE SAID POINT-OF-BEGINNING OF THIS DESCRIPTION, CONTAINING 1.87 ACRES, MORE OR LESS.

**DESCRIPTION
PARCEL NO. 3**

LOTS 7, 8 AND 9, BLOCK 8, BUSINESS CENTER SUBDIVISION, AS RECORDED IN PLAT BOOK 8, PAGE 9, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, (SAID LOT 7 BEING SAID RIGHT-OF-WAY TAKEN BY FLORIDA DEPARTMENT OF TRANSPORTATION FOR B.R. 805, RECORDED IN OFFICIAL RECORDS BOOK 1184, PAGE 128, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID PARCEL 3, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 8, BLOCK 8, THENCE S 87°35'17" E, ALONG THE SOUTH LINE OF SAID LOT 7, 8 AND 9, BLOCK 8, A DISTANCE OF 101.39 FEET TO THE SOUTHEAST CORNER OF SAID RIGHT-OF-WAY ACQUISITION PARCEL, RECORDED IN OFFICIAL RECORDS BOOK 1184, PAGE 126, THENCE N 47°07'31" E, ALONG THE BOUNDARY OF SAID ACQUISITION PARCEL, A DISTANCE OF 28.41 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF SAID LOT 7, BLOCK 8, THENCE S 12°19'49" E, ALONG THE SAID WESTERLY LINE OF LOT 7, A DISTANCE OF 23.19 FEET TO THE MOST SOUTHERLY CORNER OF THE MOST NORTHERLY PORTION OF SAID RIGHT-OF-WAY ACQUISITION PARCEL, RECORDED IN OFFICIAL RECORDS BOOK 1184, PAGE 126, THENCE N 20°12'15" E, ALONG THE BOUNDARY OF SAID ACQUISITION PARCEL, A DISTANCE OF 37.67 FEET TO AN INTERSECTION WITH THE NORTHERLY LINE OF SAID LOT 7, BLOCK 8, THENCE N 47°07'31" E, ALONG THE NORTH LINE OF SAID LOT 7, 8 AND 9, A DISTANCE OF 82.33 FEET TO THE NORTHEAST CORNER OF SAID LOT 1, THENCE S 22°15'15" E, ALONG THE EASTERLY LINE OF SAID LOT 1, A DISTANCE OF 163.32 FEET TO THE SAID POINT-OF-BEGINNING OF THIS DESCRIPTION, CONTAINING 0.21 ACRES, MORE OR LESS.

**DESCRIPTION
PARCEL NO. 4**

LOTS 5, BLOCK 8, BUSINESS CENTER SUBDIVISION, AS RECORDED IN PLAT BOOK 8, PAGE 9, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, LESS SAID RIGHT-OF-WAY TAKEN BY FLORIDA DEPARTMENT OF TRANSPORTATION, RECORDED IN OFFICIAL RECORDS BOOK 1154, PAGE 1150 AND BOOK 1104, PAGE 128, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, CONTAINING 0.07 ACRES, MORE OR LESS.

**DESCRIPTION
PARCEL NO. 5**

PARCEL OF LAND LYING IN PARTIALLY IN SECTION 19, TOWNSHIP 16 SOUTH, RANGE 24 EAST, AND PARTIALLY IN SECTION 24, TOWNSHIP 16 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, SAID PARCEL ENCOMPASSING UNPLATTED PORTIONS OF "CRESCENT PARK" INCLUDING A PORTION OF CANAL STREET AND THE 12 FOOT WIDE STRIP OF LAND SHOWN ALONG THE WEST SIDE OF LOTS 2, 3, 8 AND 7, BLOCK 8, ON SAID PLAT OF "CRESCENT PARK" AS RECORDED IN PLAT BOOK 4, PAGE 38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF BLOCK "C" CRESCENT PARK ADDITION, AS RECORDED IN PLAT BOOK 4, PAGE 38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID CORNER LYING AT THE INTERSECTION OF THE SECTION LINE COMMON TO SAID SECTIONS 19 AND 24 AND THE NORTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD AS SHOWN ON THE SAID PLAT OF "BUSINESS CENTER" THENCE S 10°14'16" E, ALONG THE SAID SECTION LINE, A DISTANCE OF 53.15 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID ESTERO BOULEVARD, THENCE S 70°35'17" E, A DISTANCE OF 107.10 FEET TO THE NORTHEAST CORNER OF LOT 1, BLOCK "A" OF SAID "CRESCENT PARK" THENCE N 10°14'16" E, ALONG THE EASTERLY LINE OF SAID LOT 3 AND LOT 7, OF SAID BLOCK "A", A DISTANCE OF 175.23 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7, THENCE N 70°35'17" E, ALONG THE SOUTH LINE OF SAID LOT 1 AND LOT 7, A DISTANCE OF 87.07 FEET TO THE POINT-OF-BEGINNING OF THIS DESCRIPTION, THENCE CONTINUING S 70°35'17" E, ALONG THE SOUTH LINE OF SAID LOT 8 AND ITS NORTHEASTERN EXTENSION, ACROSS THE RIGHT-OF-WAY OF SAID CANAL STREET, FOR A DISTANCE OF 40.36 FEET TO THE NORTHEAST CORNER OF LOT 8, BLOCK "B" OF SAID "CRESCENT PARK" THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT 8 FOR THE NEXT TWO COURSES, S 10°14'16" E, A DISTANCE OF 20.48 FEET, THENCE S 10°14'16" E, A DISTANCE OF 18.14 FEET TO AN INTERSECTION WITH THE SOUTHEASTERN EXTENSION OF THE SEASAND FACE OF AN EXISTING CONCRETE RETAINING WALL, THENCE ALONG THE SAID SEASAND FACE AND ITS NORTHEASTERN EXTENSION FOR THE NEXT EIGHT (8) COURSES, N 40°15'19" E, A DISTANCE OF 1.52 FEET, THENCE N 40°15'19" E, FOR A DISTANCE OF 1.54 FEET, THENCE N 71°11'37" W, A DISTANCE OF 1.55 FEET, THENCE N 43°54'32" W, A DISTANCE OF 13.11 FEET, THENCE N 70°35'17" E, A DISTANCE OF 41.63 FEET, THENCE N 40°15'19" E, A DISTANCE OF 74.43 FEET, THENCE S 44°21'17" E, A DISTANCE OF 15.85 FEET, THENCE N 10°14'16" E, A DISTANCE OF 21.17 FEET, THENCE N 10°14'16" E, LEAVING SAID SEASAND FACE OF THE CONCRETE SEASAND, A DISTANCE OF 12.72 FEET TO AN INTERSECTION WITH THE COASTAL CONSTRUCTION SETBACK LINE AS DESCRIBED IN PLAT BOOK 21, PAGE 1, THROUGHOUT 21, INCLUDING PUBLIC RECORDS OF LEE COUNTY, FLORIDA, THENCE S 67°11'11" E, ALONG SAID COASTAL CONSTRUCTION CONTROL LINE, A DISTANCE OF 383.78 FEET, THENCE LEAVING SAID SETBACK LINE, S 10°14'16" E, FOR A DISTANCE OF 6.34 FEET TO THE SAID POINT-OF-BEGINNING OF THIS DESCRIPTION, CONTAINING 0.33 ACRES, MORE OR LESS.

**DESCRIPTION
PARCEL NO. 6**

PARCEL OF LAND LYING IN SECTION 19, TOWNSHIP 16 SOUTH, RANGE 24 EAST, SAID PARCEL ENCOMPASSING ALL OF LOTS 3 AND 7 AND PORTIONS OF LOTS 4, 5 AND 1, BLOCK "A" OF "CRESCENT PARK" AS RECORDED IN PLAT BOOK 4, PAGE 38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF BLOCK "C" CRESCENT PARK ADDITION, AS RECORDED IN PLAT BOOK 4, PAGE 38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID CORNER LYING AT THE INTERSECTION OF THE SECTION LINE COMMON TO SAID SECTIONS 19 AND 24 AND THE NORTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD AS SHOWN ON THE SAID PLAT OF "BUSINESS CENTER" THENCE S 10°14'16" E, ALONG THE SAID SECTION LINE, A DISTANCE OF 53.15 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID ESTERO BOULEVARD, THENCE ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 170.10 FEET TO A POINT ON THE NORTH LINE OF LOT 1, BLOCK "A" OF SAID "CRESCENT PARK" AND THE POINT-OF-BEGINNING OF THIS DESCRIPTION, THENCE CONTINUING S 70°35'17" E, FOR A DISTANCE OF 47.35 FEET TO THE NORTHEAST CORNER OF SAID LOT 3, THENCE S 10°14'16" E, A DISTANCE OF 175.23 FEET TO SOUTHEAST CORNER OF SAID LOT 7, THENCE S 70°35'17" E, ALONG THE SOUTH LINE OF LOT 7, SAID LOT 7, FOR A DISTANCE OF 87.07 FEET, THENCE N 10°14'16" E, FOR A DISTANCE OF 175.23 FEET TO AN INTERSECTION WITH THE SAID SOUTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD AND THE SAID POINT-OF-BEGINNING OF THIS DESCRIPTION, CONTAINING 2.27 ACRES, MORE OR LESS.

SURVEYORS NOTES:

THE DESCRIPTIONS SHOWN HEREON ARE NEW.

SURVEYS BASED ON DESCRIPTIONS PROVIDED BY THE CLIENT AND THE RECORDED PLAT OF "BUSINESS CENTER" AS RECORDED IN PLAT BOOK 8, PAGE 9, AND "CRESCENT PARK" SUBDIVISION, AS RECORDED IN PLAT BOOK 4, PAGE 38, ALL OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A CURRENT TITLE SEARCH, ALL EASEMENTS AND RIGHT-OF-WAY TAKINGS, AND OTHER ENCUMBRANCES, KNOWN HEREON ARE BASED ON PREVIOUS SURVEYS AND TITLE DOCUMENTS.

THIS MAP IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS OR FREEDOM OF ENCUMBRANCES.

PARCELS ARE SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD.

ORIENTATION BASED ON THE EASTERLY LINE OF SECTION 24, T. 16 S., R. 24 E., AS BEARING N 00°41'08" W.

COORDINATES SHOWN HEREON ARE BASED ON FLORIDA DTD, 08/01/2006, NAD 83 90.

THE EXISTENCE OF UNDEVELOPED OR NON-USEABLE IMPROVEMENTS WAS NOT INVESTIGATED, UNLESS OTHERWISE SHOWN.

ACCORDING TO FIRM MAP NO. 120710004P, EFFECTIVE DATE OF AUGUST 24, 2009, THESE PARCELS OF LAND ARE LOCATED IN FLOOD ZONE VE, WITH BASE FLOOD ELEVATIONS THAT VARY FROM ELE. 11 TO ELE. 17, NAVD83, SEE DRAWING FOR BASE FLOOD BOUNDARIES.

CERTIFICATE OF AUTHORIZATION LICENSE BUSINESS NO. 6881

DATE OF LAST FIELD WORK: 10-11-2011 IN FIELD BOOK 97, PAGE 35.

UNLESS IT BEARS THE ORIGINAL SIGNATURE AND RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, AND ALL SHEETS ARE INCLUDED, THIS MAP IS NOT VALID.

PREPARED BY:

MARK A. HATFIELD P.E.M.
FLORIDA CERT. NO. 4155

DATE

PROJECT:

A PROPOSED FMB/TPI
JOINT EFFORT TO
RESTORE AND TO
REINVIGORATE THE
DOWNTOWN BEACH
AREA

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:

TPI
HOSPITALITY
100% Employee Owned

THE HOSPITALITY, LLC
1435 FORT MYERS BLVD. 400
FORT MYERS, FL 33901
PHONE (239) 336-7357 FAX (239) 336-9693

CONSULTANTS:

ARCHITECT
PARKER & ASSOCIATES, INC.
100 PETERMAN WAY
PALM BEACH, FL 33480
PHONE (561) 833-1111 FAX (561) 833-1473

**PLANNING, CIVIL, SURVEY &
LANDSCAPE ARCHITECTURE**

DAVID FLUMMER & ASSOCIATES
2861 CENTER POINTE DRIVE, UNIT 100
FORT MYERS, FL 33904
PHONE (239) 527-2843 FAX (239) 537-0986

TRANSPORTATION

DAVID FLUMMER & ASSOCIATES
2144 McDONOUGH BLVD.
FORT MYERS, FL 33904
PHONE (239) 532-2811 FAX (239) 532-0986



REVISION:

PROJECT:	BMH
DRAWING BY:	BMH
APPROVED BY:	TOWN OF FORT MYERS BEACH
DATE:	04-30-2018
SHEET TITLE:	

BOUNDARY SURVEY

SHEET NUMBER	X-102-BNDY-00
JOB FILE NUMBER	15069-14



Case # _____ Date Received: _____

Town of Fort Myers Beach COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: TPI-FMB CPD Amendment
Authorized Applicant: Steven C. Hartsell, Esquire
STRAP Number(s): 19-46-24-W4-01408.0070, 19-46-24-W4-U0491.2610, 19-46-24-W4-U0494.2609, 19-46-24-W4-U0496.2608, 19-46-24-W4-U0498.2606, 24-46-23-W3-00009.0000.

Current Property Status: Under construction
Current Zoning: Commercial Planned Development (CPD)
Future Land Use Map (FLUM) Category: Pedestrian Commercial FLU
Platted Overlay? ☐ yes, ☒ no FLUM Density Range: See Ord. #23-09

Requested Action:

☐	DRI (with rezoning)
☒	Planned Development (also check below)
☐	Rezoning from: _____ to: _____
☒	Amendment to Master Concept Plan/attendant documentation



Case # _____ Date Received: _____

PART I
Narrative Statements

A. Comprehensive Plan Amendments (check one)

☒	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐	The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)

B. Phasing of Construction

☐	The development is to be constructed in a single phase.
☐	The development is to be constructed in phases as follows: (describe proposed phasing below)
No change proposed; See Ordinance #23-09	



Case # _____ Date Received: _____

C. Comprehensive Plan Compliance.

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

No change proposed; See Ordinance #23-09

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

No change proposed; See Ordinance #23-09



Case # _____ Date Received: _____

E. Decision-making Compliance

Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

SEE ATTACHED NARRATIVE

F. Schedule of deviations and written justification

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

No change proposed; See Ordinance #23-09



Case # _____ Date Received: _____

G. Administrative amendments to approved Master Concept Plan

For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

Not Applicable

PART 2
Submittal Requirements

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

Public Hearing Request Form

Supplement Form PH-D

Master Concept Plan.....No change proposed; see Ordinance #23-09

Traffic Impact Statement.....No change proposed; see Ordinance #23-09

Architectural Elevations.....No change proposed; see Ordinance #23-09

Schedule of Uses.....No change proposed; see Ordinance #23-09

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre

\$2000.00 PD Amendment minor (< acre total property area)

\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.

MARGARITAVILLE CPD

ORDINANCE #23-09

ORDINANCE 23-09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 18-04, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend. or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, TPI-FMB LLC and Steve Hartsell with Pavese Law Firm, applicants and agents for the property owners, generally located at 1170, 1180/1192, 1204/1206 Estero Boulevard, 251 Crescent St, 1150 Fifth St. and other unaddressed parcels, parcels generally identified as STRAP numbers 24-46-23-W3-00205.0070 (MCP parcel #3), 24-46-23-W3-00006.0000 (MCP parcel #1), 24-46-23-W3-00206.0060 (MCP parcel #1), 24-46-23-W3-00009.0000 (MCP parcels #2 AND #5), 19-46-24-W4-U0494.2609 (MCP parcel #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP parcel #2), 19-46-24-W4-0140B.0070 (MCP parcels #2 AND #5), 19-46-24-W4-U0496.2608 (MCP parcel #2), AND 19-46-24-W4-U0498.2607 (MCP parcels #2 AND #6) in the Town of Fort Myers Beach, filed applications to amend Ordinance 18-04 and amend conditions of approval of the commercial planned development zoning; and

WHEREAS, Ordinance 18-04 rezoned the property from the Commercial Planned Development (CPD), Downtown, and Environmentally Critical (EC) zoning districts to CPD with Master Concept Plan (MCP) in order to develop a hotel resort and associated facilities, on 5.1 +/- acres more or less property, located at 1170, 1180/1192, 1204/1206 Estero Boulevard in the Town of Fort Myers Beach; and

WHEREAS, the subject property is located in the Pedestrian Commercial and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, with the exception of portions of Town or County right-of-way, the applicant has indicated the subject property is under common control and Tom Torgerson serves as the managing member for each ownership listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 09, 2023; and

WHEREAS, at the May 09, 2023 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-85; and

WHEREAS, at the May 09, 2023 public hearing the LPA recommended approval by a 5-0 vote; and

WHEREAS, on June 20, 2023 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was legally advertised and held before the Town Council on August 7 2023; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, with the following terms, conditions, and requirements which the Town Council finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit A provides the approved property development regulations, the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

WHEREAS, Exhibit B is the approved Master Concept Plan, updated per the adopted original Ordinance 18-04; and

WHEREAS, the Town Council finds that this request to amend existing ordinance 18-04 for a CPD, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #1

Deviation from LDC Section 34-1803(a) which establishes equivalency factors for converting allowable dwelling units to hotel rooms. The equivalency remains at three, a total of 254 hotel rooms (224 rooms on Parcel 1 and 30 rooms on Parcel 2) per the revised Master Concept Plan pages dated 5/2018 are authorized due to exceptional circumstances and unique public benefit on record to include view corridor and permanent perpetual transfer of density and development rights from the VE zone to the AE zone.

Deviation #2

Deviation from LDC Section 34-675(b) which limits building heights as follows: 3 stories and 30 feet along Crescent Street and Fifth Street; 3 stories and 40 feet along the south side of Estero Boulevard; to allow the main resort building which fronts on Estero, Crescent and Fifth to be 4 stories and 38 feet, 10 inches feet above average base flood elevation and along the south side of Estero Boulevard of 4 stories, and other buildings to be at the lesser heights as shown on the Master Concept Plan.

Deviation #3

Deviations from LDC Section 34-675(c) which limits floor area ratio (FAR) to 1.4 for properties fronting on Estero Boulevard and to 1.0 for all other properties in the CPD to allow a FAR of 1.55 on Parcel 1 and Parcel 2 and Parcel 3.

Deviation #4

Deviation from the LDC Section 10-416(d)(2) which requires a Type D buffer (15 feet wide with 5 trees and staggered hedges to form a 3-foot visual screen between parking and a right-of-way) - to replace the Type D buffer with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on the Master Concept Plan.

Findings for the rezoning:

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested amendment to Commercial Planned Development (see LDC 34-85 and 34-216) ordinance 18-04:

- a. Minor ambiguities were resolved through the deviation process.
- b. Long-standing blighted conditions on the subject property can be ameliorated through approval of this rezoning.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.

- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- o. The rezoning meets all specific requirements of the Comprehensive Plan that are relevant to the request, including the following:
 - Policy 4-C-4 on building heights taller than the standard height limit
 - Policy 4-C-6 on hotel/motel densities
 - Policy 4-C-8 on density transfers
 - Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts

WHEREAS, the Town Council made the following formal findings before making final decisions on the four requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216 and 34-1803):

- 1. Deviations #1, #2, and #3 are being partially approved only due to the exceptional circumstances presented by the coordinated redevelopment of several critical parcels in the downtown zoning district in furtherance of policies in the Comprehensive Plan and design guidance provided by the Old San Carlos Boulevard / Crescent Street Master Plan. Key public benefits offered by the applicant include a perpetual view corridor along 324 feet of the beach side Estero Boulevard across the beach club resulting from a permanent transfer of density and development rights from the VE zone to the AE zone; and a second perpetual view corridor at the foot of the Matanzas Pass Bridge resulting from the permanent transfer of density and development rights, no buildings on Parcel 3, and the donation of Parcel 4 to the Town of Fort Myers Beach.
- 2. All aspects of the proposed development, as limited by the special conditions being imposed by the Town Council, are compatible with the surrounding area,

- including building height, traffic flow, and intensity of use.
3. The proposed development, as modified by these deviations, clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.
 4. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
 5. Granting these deviations will enhance the achievement of the objectives of the proposed development.
 6. The general intent of the LDC to protect the public health, safety, and welfare will be preserved and promoted with these deviations.
 7. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
 8. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to amend Ordinance 18-04 and amend conditions of approval of the commercial planned development zoning, **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve** the Application.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did meet its burden of proof that the request to amend Town of Fort Myers Beach's Ordinance no. 18-04 and amend the conditions of approval for the commercial planned development zoning, **does** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVE** the requested application.

Section 3. Town Ordinance 18-04 is amended by this Ordinance and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Council Member King and seconded by Vice Mayor Atterholt, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this 7th day of August 2023.

Dan Allers, Mayor	Recused
Jim Atterholt, Vice Mayor	Aye
John R. King	Aye
Bill Veach	Nay
Karen Woodson	Aye

FORT MYERS BEACH TOWN COUNCIL

Dan Allers

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Gretchen R. H. "Becky" Vose

Gretchen R. H. Vose, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 19th day of September 2023.

Exhibit A CONDITIONS OF APPROVAL

This project area includes six (6) parcels as demonstrated in MCP X-103-BNDY.01 Boundary Survey. Parcels 1, 2 and 3 are to be rezoned to Commercial Planned Development (CPD). Parcels 4, 5, and 6 will retain their existing zoning classifications. All parcels are included in the Master Concept Plan and subject to the conditions as outlined below:

- 1** Parcels 1, 2, and 3 are authorized for a maximum of 254 hotel rooms. Parcel 1 is approved for a maximum of 224 hotel rooms. Parcel 2 is approved for a maximum of 30 hotel rooms. Parcel 3 is approved for surface parking only and no other improvements or hotel rooms, other than an accessory surface parking lot, is permitted. The transfer of density and development rights of Parcel 3 is permanent and binding.
- 2** The CPD is authorized to allow building heights as follows, with these heights measured in accordance with 34-631 of the LDC, as depicted on the Master Concept Plan, and as described:
 - a. The main resort building on Parcel 1 may be up to 4 stories and up to 38 feet, 10 inches above base flood elevation, provided that the highest points of the roofline and any architectural features across the property shall not exceed 52 feet from 4.5 feet above mean sea level elevation.
 - b. The larger building on Parcel 2 may be up to 4 stories, provided that the highest points of the roofline and any architectural features shall be a height of 52 feet, 4 inches or less, above existing typical ground level. Approved building heights for all buildings on Parcel 2 are shown in the Master Concept Plan.
 - c. No buildings or vertical structures are permitted on Parcel 3. The transfer of density and developments rights on Parcel 3 is permanent and binding.
- 3** The CPD is authorized to allow floor area ratios as follows, measured in accordance with 34-633 of the LDC. The total land area of Parcel 1, 2, and 3 may be utilized for the floor area ratio calculation of 1.55. The square footage of the proposed buildings may be clustered as depicted on the Master Concept Plan and includes:
 - a. The constructed floor area ratio on Parcel 3 and 5 shall be 0.0. Buildings, or any other improvements other than improvements associated with an at surface grade parking lot on Parcel 3 and a pool security fence on Parcel 5, are prohibited on these parcels.
- 4** The CPD is authorized to replace the Type D buffer required by 10-416(d)(2) of the LDC with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on Sheets X-502-RW.00 through X-504-RW.02 of the Master Concept Plan as revised through May 2018, subject to the following requirements:

- a. Prior to obtaining any development orders, the landowner will dedicate to the town/public a perpetual public sidewalk easement to accommodate a sidewalk of seven (7) feet in width on the south side of Fifth Street where the MCP shows portions of the proposed sidewalk on private land.
- b. The landowner will construct the sidewalks, curbs, and tree yards and will plant the lawn and street trees, as shown on the Master Concept Plan, prior to the issuance of any temporary certificates of occupancy including for adjoining buildings. These improvements must meet technical specifications of the Town of Fort Myers Beach along Fifth Street and Crescent Street and of Lee County along Estero Boulevard, except for such deviations as granted by the Town when reviewing and approving the Master Concept Plan. The landowner will maintain the tree yards and street trees in perpetuity.
- c. The street trees shown along Estero Boulevard will be located closer to the curb if, prior to approval of the Development Order, but no later than January 2019 and with appropriate documentation of coordination, FDOT and Lee County approves the new 1.5-foot lateral offset standard alignment of the Florida Department of Transportation.
- d. Prior to Development Order application, the landowner will document their efforts to the Town to seek approval from Lee County to re-route stormwater from the existing drainage inlet on Estero Boulevard into the resort's stormwater system so that roots from street trees on this block cannot interfere with any underground exfiltration trench. The conveyance of the Estero Boulevard drainage into the resort stormwater system will only be constructed if there are no adverse impacts or backflow into the existing system.
- e. No buffer vegetation may be planted in any public right-of-way or any sidewalk easement other than depicted on the Town approved Master Concept Plan.
- f. While the Town approved Master Concept Plan provides conceptual approval of under-building screening of parking areas, as required by LDC 34-992 (d)(1); a compliance and enforcement determination of the materials, technical specifications, and minimum opacity of the latticework around the ground story are subject to approval of the Town Manager or designee, as required by 34-992(c) and 34-992(d)(2) of the LDC. At the concurrence of the land owner, the Town Manager may allow occasional segments of latticework to be replaced by an opaque screen to allow works of art to be displayed in place of climbing vegetation.
- g. If at the end of the one (1) year plant establishment period from the end of the Temporary Certificate of Occupancy, the buffer plantings and climbing vegetation planted on the latticework do not visually

screen activities in the ground story, the Town Manager will require corrective action. Corrective actions may include, but are not limited to, different vegetation, different management techniques, and supplemental screening behind the latticework, among other practices. The property owner will take corrective action within 30-days of written notification from the Town regarding the deficiencies in the buffer. Failure to respond to any 30-day written notice shall constitute an appealable \$500 per incident per day civil violation.

5 The approved property development regulations for this CPD are presented in the attached Exhibit A, which will be substituted during the permitting process for the property development regulations that the LDC provides for the DOWNTOWN zoning district.

6 The approved schedule of uses for this CPD is limited to the following:

Parcel 1 (Bay Side)	Parcel 2 (Gulf Side)	Parcel 3
LODGING use group: Hotel Uses Accessory to ATM Administrative Offices Consumption on Premises, outdoor service and seating limited to locations on Sheets X-505-COP.01 & X-506-COP.02 Parking Lot, Accessory Subordinate Uses Temporary Uses, if permitted by Ch. 34 MARINE use group No Marina Uses	LODGING use group: Hotel RETAIL use group: Recreation Facilities, Commercial (limited to 325 total people per day who are not staying at the hotel) Restaurant Commercial Accessory Uses: ATM Administrative Offices Consumption on Premises, outdoor service and seating limited to locations on Sheets X-506-COP.01 & X-507-COP.02 Subordinate Commercial Water-oriented Rentals MARINE use group: (if permitted by Chapter 27) Parasailing Operations Office Personal Watercraft Operations Office	LODGING use group: Uses Accessory to Parking Lot, Accessory (the only use permitted on Parcel 3)

7. The property owner is responsible for accounting and enforcement of the per day limitation of 325 non-resort guests at the aquatic venue or lesser number based upon Fire Department occupancy limitations; and, if requested, for providing records to the Town on demand for verification. Failure to provide records or limit non-hotel guests and/or hotel guests to the approved maximum limits per day shall constitute a \$500 per day per incident civil violation.
- 8 This CPD approves structures up to the following square-footage maximum on Parcels 1 and 2 which are entirely landward of the 1978 coastal construction control line and within the CPD zoning district boundary:
 - a. **Hotel**
 1. 250,783 SF, of which up to 96,085 SF could be guest units and up to 95,751 SF could be ground-story parking.
 2. 224 guest units to be on bay-side Parcel 1 (above parking) and up to 84,745 square feet could be guest units.
 3. 30 guest units to be on gulf-side Parcel 2 and up to 11,340 square feet.
 - b. **Restaurant on Parcel 2**
 1. 15,870 SF for a restaurant, of which 1,514 SF would be a bar; plus, an additional 1,364 SF for outdoor seating and an additional 2,000 SF for indoor storage
 - c. **Beach Club on Parcel 2**
 1. 3,786 SF for an ancillary restaurant
 2. 2,508 SF in an existing building for ancillary restrooms and lockers
 - d. **Pedestrian Bridges between Parcels 1- 2 if approved by Lee County**
 1. 2,691 SF for the access area required for a publicly accessible pedestrian bridge;
 2. 1,380 SF for the pedestrian bridge that is not included in the FAR.
- 9 Redevelopment and future uses on the subject property must be consistent with the attached Master Concept Plan as approved by the Town Council as part of this request. All prior Master Concept Plans, CPD zoning approvals, special conditions, and development agreements for the subject property are no longer valid. All development activities and future uses must comply with all the requirements of the Town of Fort Myers Beach Land Development Code at the time of Development Order approval, except as explicitly modified by this CPD approval. Lot lines

shown on existing plats must be vacated or replatted, as appropriate and as administratively determined by the Town Attorney, prior to issuance of Development Orders. If changes to this approval are requested, they will be reviewed as requests to formally modify this CPD. This CPD's new Master Concept Plan consists of these 26 sheets:

- a. X-G01 - Cover Sheet
 - b. X-101-FLU - Future Land Use and Project Boundary
 - c. X-103-BNDY.00 - Boundary Survey (1 of 2)
 - d. X-103-BNDY.01 - Boundary Survey (2 of 2)
 - e. X-104-DA - Developable Area Exhibit
 - f. X-105-MCP.00- *Floor Area Ratio* First Floor
 - g. X-106-MCP.01 - Floor Area Ratio Second Floor
 - h. X-107-MCP.02- Floor Area Ratio Third Floor
 - i. X-108-MCP.03 - Floor Area Ratio Fourth Floor
 - j. X-109-MCP.00 - Master Concept Plan First Floor
 - k. X-110-MCP.01 - Master Concept Plan Second Floor
 - l. X-111-MCP.02 - Master Concept Plan Third Floor
 - m. X-112-MCP.03 - Master Concept Plan Fourth Floor
 - n. X-113-MCP.04 - Master Concept Plan Deviations and Notes
 - o. X-114-MCP.05 - Master Concept Plan Building Height
 - p. X-A201 -Exterior Elevations
 - q. X-A202 -Exterior Elevations
 - r. X-A203 - Exterior Elevations
 - s. X-A301 - Building Sections
 - t. X-501 - Parking Locations and Calculations
 - u. X-502-RW.00 - Right-of-way and sidewalk/buffer plan
 - v. X-503-RW.01 - Right-of-way and sidewalk/buffer plan
 - w. X-504-RW.02 - Right-of-way and sidewalk/buffer plan
 - x. X-505-COP.01 - Consumption on Premises Diagrams
 - y. X-506-COP.02 - Consumption on Premises Diagrams Pedestrian Circulation
 - z. X-507-VT-Visibility Triangles
- 10** A pedestrian bridge across Estero Boulevard is shown on the Master Concept Plan. Conceptual approval of this bridge is subject to the following requirements for design, approval, and operation:

- a. The pedestrian bridge must be constructed simultaneously with the buildings it connects.
 - b. The elevated terrace on the second story of the main resort building on Parcel 1 must include a public ADA compliant access for public use.
 - c. Visible publicly accessible stairwells and elevators on both sides of Estero Boulevard must connect the sidewalks to each end of the pedestrian bridge. The stairwell on Parcel 2 must provide access to publicly accessible restrooms in the restaurant building, with clear signage indicating the public's access and rights to use these restrooms and pedestrian bridge, if approved, without a fee or charge.
 - d. In order to guarantee the general public's permanent right to use the bridge and the adjoining stairways, elevators, and restrooms, the landowner must execute an instrument that guarantees this access in a form suitable to the Town Attorney.
 - e. Before constructing the bridge over Estero Boulevard, the landowner must obtain review and approval from Lee County and must enter into a formal agreement with Lee County regarding design, maintenance, liability, operations, future changes, and other relevant details. The bridge design must allow and not interfere with nor prevent all elements necessary for a traffic signal and grade level pedestrian crosswalk at the Estero Boulevard-Crescent Street intersection. If necessary, FDOT review and approval must be obtained.
 - f. All FDOT and Lee County approvals must be received by the applicant prior to approval by the Town. The Town's approval shall be limited to aesthetic and non-structural design.
- 11** Sheet X-109-MCP.00 of the Master Concept Plan identifies certain important features on Parcels 2 and 6 (the beach-side parcels) that will require separate critical actions by the Town and by the landowner at a later date. This sheet is being included in the Master Concept Plan with these understandings:
- a. As shown on Sheet X-105, the landowner intends to request the vacation of a narrow right-of way at the end of Crescent Street, plus the first 185 feet of Canal Street south of Estero Boulevard which is part of Town-maintained Beach Access #36. Understanding that the Town's Comprehensive Plan strictly limits vacations of rights-of-way in order to preserve future access to the water, the landowner has agreed to provide a net increase in public access by donating Parcel 6 to the Town and constructing on it a new public street replacing Canal Street. The new public street will also be providing beach access and public parking spaces on 67 feet wide new rectangular

right-of-way beginning at Estero Boulevard. The Town Manager or designee shall be responsible for design approval of the new street. The new street will be completed on or before twelve (12) months following the issuance of a Development Order.

- b. The landowner has also agreed to construct and dedicate a five-foot wide perpetual public access easement for a new pedestrian beach access at the "north" end of Parcel 2 that meets ADA accessibility requirements and the Town Manager's specifications as to design, surfacing and signage. The easement shall be constructed, completed, and open to the public on or before twenty-four (24) months following the issuance of the associated Development Order. During construction of the project the property owner shall maintain a minimum of one 25' wide ADA accessible beach access from Estero to the end of the property at or near the water.
- c. The landowner will execute instruments to complete donations, the easement(s) for new pedestrian beach access easement and Parcel 6, in a form suitable to the Town Attorney and will provide them to the Town Attorney, who will not record either instrument unless the Town Council formally vacates the two existing rights-of-way shown on Sheet X-105; and:
 - i. The landowner either completes the construction of the new street or allows continued public use of Canal Street or Temporary Beach Access until the new street is completed.
 - ii. The Town will not issue development orders for demolition, site work, or new buildings on Parcels 1 or 2 unless the Town agrees to vacate both rights-of-way and related or associated property transfers are executed.
 - iii. After the new street is constructed by the applicant and turned over to the Town, Parcel 6 will no longer be subject to any requirements of this CPD.

12 The beach club on Parcel 2 must meet these additional requirements:

- a. To allow the reduced building frontage on the south side of Estero Boulevard (see LDC 34-675), development order plans must demonstrate three view corridors from Estero Boulevard to the beach (two totaling 319 feet; one totaling five feet) that total at least 324 feet along Estero Boulevard.
- b. Any perimeter fence on the beach side of Estero Boulevard must be at least 80 percent transparent, must be placed within a landscaped planting area at least five (5) feet wide, and shall be maintained at a height of three (3) feet. If the Florida Building Code requires a taller fence at this location, the Fort Myers Beach Building Official shall adjust the fence height accordingly.

- c. A detailed lighting plan, including any lit signage, must be provided with the development order application for the beach club; this plan must comply with LDC requirements in 10-154(8) and 14-76 for sea turtle conservation.
 - d. A detailed landscaping plan showing the location and type of all plantings, including beach plantings adjacent to the existing retaining wall, must be provided with the development order application for the beach club.
 - e. Directional signage approved by the Town as to design, installation methodology, and location shall be erected along Estero Boulevard that advises the public of both new public beach accesses.
 - f. The beach club and its ancillary uses may operate only from 7am to one hour after sunset, but never later than 9 pm. That is the Beach Clubs hours of operation unless otherwise temporarily altered in the Town's special event use regulations in Section 34-1264 of the LDC.
 - g. To implement the applicant's commitment to limit access to the beach club to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.
 - h. The beach club and aquatic venue shall provide no less than one security personnel per 200 guests.
 - i. All necessary dune plantings and walkovers shall be provided in compliance with Town codes and ordinances.
- 13** The following transportation and access features are shown on the Master Concept Plan and are an integral part of this approval:
- a. All existing vehicular access points on Estero Boulevard shall be closed except the access to the one new public street on Parcel 6.
 - b. The one and only access point on Crescent Street will be an entrance-only driveway near the intersection with Fifth Street, which will be the main entrance for resort guests.
 - c. Access points on Fifth Street are limited to the one main exit for resort guests and a separate entrance and exit for service vehicles on Parcel 1, plus two existing driveways to the surface parking lot on Parcel 3.
- ~~**14** Prior to the Town issuing any development orders for demolition, site work, or new buildings on Parcel 2, the landowner must execute and record a restrictive covenant in favor of and enforceable by the Town in perpetuity that acknowledges that this CPD approval has consumed all~~

~~allowable density and intensity on Parcels 1, 2, 3, and 5 and that no~~ **No** additional development may occur beyond that which is approved by this CPD **without prior approval of the Town Council**. ~~Prior to issuance of a temporary or final certificate of completion on Parcel 2 (but not later than 36 months after commencing construction), the landowner must convey to the Town a perpetual conservation easement in a form acceptable to the Town Attorney, which after acceptance will be recorded in the Public Records of Lee County, over those portions of Parcels 2 and 3 on which structures or pavement are not constructed or proposed to be constructed under the Master Concept Plan adopted as part of this CPD. The intent of this condition is to limit in perpetuity the density and intensity of Parcels 2 and 3 to that which is approved by this CPD and to maintain all areas on which buildings and pavement are not constructed and as shown on the Master Concept Plan, only for outdoor recreation area on Parcel 2 and a single-level surface parking lot on Parcel 3, but specifically excluding any additional parking facilities, buildings, and other similar structures or any additional improvements~~ **require that any future changes to this CPD must comply with the Fort Myers Beach Plan and LDC in effect at the time of any future application.**

- 15 Development order plans must identify the location of 359 off-street parking spaces within the area now identified for parking on Parcels 1 and 3. The public parking spaces to be constructed on Parcel 6 cannot be counted toward the 359 spaces reserved for resort parking.
 - a. None of the 359 spaces are eligible for joint-use agreements or sharing agreements that would allow any of these spaces to substitute for off-street parking that is required by the LDC for businesses located outside this CPD's Master Concept Plan.
 - b. Prior to the issuance of a Temporary Certificate of Occupancy, the applicant will also construct or provide 75 dedicated parking spaces at an off-site location along the trolley route from the Beach Park & Ride facility to be available for the entire resorts parking needs within 2.8 miles of Parcel 1.
 - c. Three or more years after issuance of the resort's certificate of occupancy, the applicant may request to modify this condition to eliminate some or all of these off-site parking spaces upon a convincing showing that this condition requires more parking spaces than are needed for the entire resorts parking needs.
 - d. Identify to the Town if any shared use parking agreements are currently in existence and will be terminated to meet this CPD condition.
- 16 Development order plans must demonstrate that vehicles can be accommodated by a multi-vehicle parking mechanism per parking spot. Valet parking must be managed so that vehicles are never stacked on Crescent Street or 5th Street waiting to access the valet area. The property owner shall install No Stop/Stand signs on Crescent and 5th

Street.

- 17 Individual signs may be placed on this site during and after development as may be allowed by the LDC regulations that are in effect at that time. Murals are permitted in compliance with LDC regulations.
- 18 Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:
 - a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on Sheets X-506-COP.01 and X-507-COP.02. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.
 - b. Alcoholic beverages and amplified music in the beach club are limited to 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m. Expansion of COP onto the sandy beach seaward of the seawall is prohibited.
 - c. Amplified music on the outdoor terrace on Parcel 1 is limited 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m.
 - d. Amplified music in unenclosed hotel restaurant and bar on Parcel 2 are limited to 7:00 a.m. to midnight.
 - e. Alcoholic beverages may not be served at locations other than those shown on the Master Concept Plan unless approved by special use permit, special exception or by administrative approval, as provided in 34-1264 of the LDC.
- 19 Prior to applying for a permit for the stormwater management system from the SFWMD, the landowner shall evaluate the receiving of drainage from the intersection of Crescent and Fifth for suitability and consistency with SFWMD requirements. Provided these two components can be combined under those requirements, the landowner will design and construct the project to receive stormwater from the intersection of Crescent Street and Fifth Street into and through the project's stormwater system, including cost of upsizing the project stormwater system. In order to be considered feasible, any routing of stormwater from the intersection of Crescent and Fifth Streets must accommodate the project's design as approved by this CPD and it shall be borne by the property owner. The property owner will provide copies of the SFWMD permit application, and all subsequent responses to requests for additional information, to the Town's stormwater consultant for review and concurrent with filing with the SFWMD.

- 20 In order to provide an additional view corridor along the approach to the Town from the Matanzas Pass Bridge, the applicant has offered and the Town has accepted the following changes to the Master Concept Plan:
- a. No buildings will be constructed on Parcel 3 in perpetuity. Parcel 3 shall remain as a 21-space surface parking lot for the resort because all development rights on Parcel 3 are being used on Parcels 1 and 2. ~~Parcel 3 will be included in the covenants and conservation easement described in Condition 14.~~ Landscape buffers shall be done in accordance with MCP X-504-RW.02.
 - b. No buildings will be constructed on Parcel 4 by the applicant and the existing building will be removed. Parcel 4 will be donated by the applicant to the Town for civic, public purposes and will include a reverter in the event the parcel is not used for such civic, public purposes. The demolition and re-grading of the property will be completed no later than September 30th, 2018. The Town shall receive Parcel 4 within 60 calendar days of the issuance of all necessary approvals related to the development order and approvals of the pedestrian bridge. After the existing building is removed by the applicant and the property transfer is completed, Parcel 4 will no longer be subject to any requirements of this CPD. Demolition of Parcel 4 may be completed prior to development order being issued.
- 21 Barring a direct hurricane or other Acts of God and governmental-related delays, Parcel 1 and the Parcel 1 main hotel shall be completed and open for operation within three years of the issuance of a development order approval. All other portions, phases, and uses shall be in operation within five years of issuance of a development order approval. A Development Order application for development of Parcel 1 shall be submitted no later than 270 calendar days from effective date of the rezoning ordinance.
- 22 Additional approvals of special events are allowed. Application for such special event approvals shall be submitted through the Town's adopted Special Event processes and may temporarily alter hours of operation, amplified music limits, and public user capacity, among other items.
- 23 Bicycle racks for public use will be provided as shown on the Master Concept Plan. All bicycles and similar alternative transportation options shall be provided within the approved development footprint. Operations of any bicycle loan business or operation shall require the returning of bicycles to the CPD properties on a daily basis; as well as comply with Town Codes and provide education materials about Town codes and regulations to bicycle users.
- 24 Construction staging shall be authorized when in compliance with all applicable Town codes, except that concrete delivery/pumping for the building's foundations and terrace may occur no earlier than 4:00 am. No staging shall be permitted on Parcel 4 or Parcel 6 after donation to the

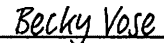
Town. No other approvals are inferred from approval of the CPD. The landowner or developer shall be responsible for submittal of any requests for additional staging or construction management approvals from the Town Council.

- 25 Any violation of the CPD conditions of approval or deviations shall constitute a \$500 per day per incident civil violation.
- 26 The applicant has offered to provide residents of the Fort Myers Beach community a "Discount Plan," which provides a 25 percent discount on food, alcohol and non-alcohol beverages, Family Beach Club Admission, and retail store purchases, to anyone with a valid FL Driver's License with a home address in zip code 33931.
- 27 Per LDC Section 34-216(b)(5), the revised Master Concept Plan must be submitted to the director reflecting all modifications to the deviations and conditions as made herein by the Town Council.

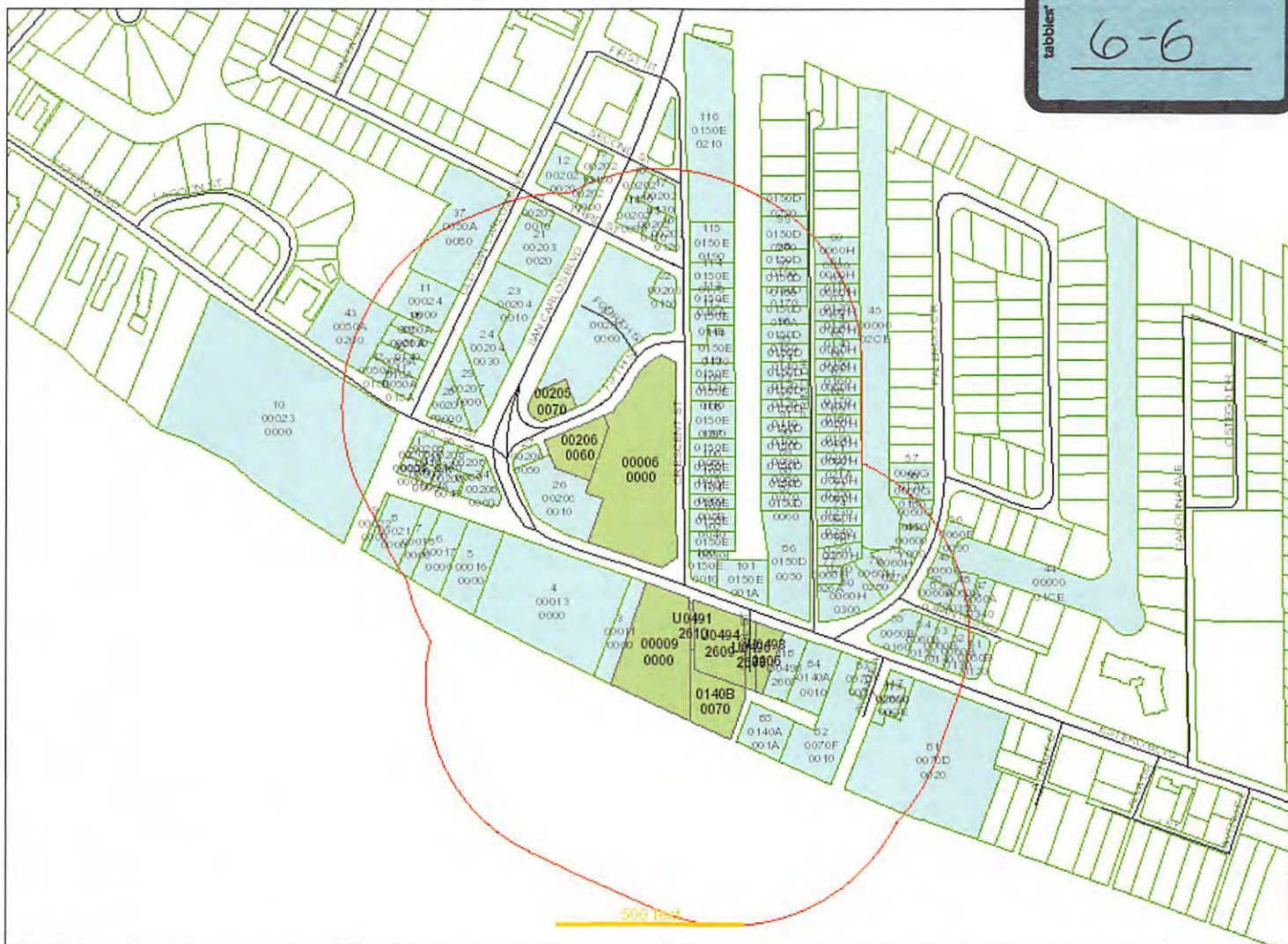
Findings Regarding the Conditions

1. All recommended special conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.

Signature: 
Dan Allers (Sep 19, 2023 10:16 EDT)
Email: allersd@fmbgov.com

Signature: 
Becky Vose (Sep 19, 2023 10:46 EDT)
Email: bvose@voselaw.com

Signature: 
AMY BAKER (Sep 19, 2023 10:47 EDT)
Email: AMY@FMBGOV.COM



Date of Report: October 09, 2023

Buffer Distance: 500 feet

Parcels Affected: 131

Subject Parcels: 19-46-24-W4-0140B.0070, 19-46-24-W4-U0491.2610, 19-46-24-W4-U0494.2609, 19-46-24-W4-U0496.2608, 19-46-24-W4-U0498.2606, 24-46-23-W3-00006.0000, 24-46-23-W3-00009.0000, 24-46-23-W3-00205.0070, 24-46-23-W3-00206.0060

To change, add or remove subject parcels please change the parcel selection in [GeoView](#)

[Click here to download the map image, mailing labels \(Avery 5161\) and CSV formatted information.](#)

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	MAP INDEX
1005 ESTERO LLC 1005 ESTERO BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00007.0000 1005 ESTERO BLVD FORT MYERS BEACH FL 33931	FRM SW COR BLK E CRESCENT PK ADD ON E LI SEC 24 46 23 RUN NWLY AT INC	1
KALYMNIOUS PARTNERSHIP LLP 1001 ESTERO BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00008.0000 1001 ESTERO BLVD FORT MYERS BEACH FL 33931	FRM SW COR BLK E CRESCENT PK ADD ON E LI SEC 24 RUN NW 69 DEG 54 MIN WITH SEC	2
CLOWNFISH RESTAURANT HOLDINGS 11201 COORPORATE CIRCLE N SAINT PETERSBURG FL 33716	24-46-23-W3-00011.0000 1154 ESTERO BLVD FORT MYERS BEACH FL 33931	BEG SW COR BLK E CRESCENT PARK ADD ON E LI SEC 24 S ALG E LI SEC 53.24 FT TO S	3
LEE COUNTY PO BOX 398 FORT MYERS FL 33902	24-46-23-W3-00013.0000 1100 ESTERO BLVD FORT MYERS BEACH FL 33931	PARL IN SE 1/4 SEC 24 TWN 46 R 23 S OF ESTERO BLVD AS DESC IN INST #'S 201000023675 + 201000023676	4

PRESAUD PROPERTIES FL 361 SEMINOLE WAY FORT MYERS BEACH FL 33931	24-46-23-W3-00016.0000 1046 ESTERO BLVD FORT MYERS BEACH FL 33931	FROM SW COR BLK E CRESCENT PK ADD ON E LI SEC 24 RUN S ALG SD LI TO S LI CO RD	5
PERSAUD PROPERTIES FL INVESTME 361 SEMINOLE WAY FORT MYERS BEACH FL 33931	24-46-23-W3-00017.0000 1028 ESTERO BLVD FORT MYERS BEACH FL 33931	FROM SW COR BLK E CRES PK ADD ON E LI SEC 24 RUN S ALG SD LI TO S LI CO RD TH	6
BENCIN ENTERPRISES INC BEACH ACCOUNTING 17274 SAN CARLOS BLVD #202 FORT MYERS BEACH FL 33931	24-46-23-W3-00018.0000 1010 ESTERO BLVD FORT MYERS BEACH FL 33931	A PAR AS DESC IN OR 1234 PG 1371	7
WHITAKER WILLIAM D & 15820 SAN ANTONIO CT FORT MYERS FL 33908	24-46-23-W3-00021.0000 1000 ESTERO BLVD FORT MYERS BEACH FL 33931	PARL IN SE1/4 SEC 24 S OF ESTERO BLVD+E OFSAN CARLOS DR DESC OR 1547 PG 1077	8
LEE COUNTY PO BOX 398 FORT MYERS FL 33902	24-46-23-W3-00022.0000 10 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BEG NW COR BLK 8 BUSINESS CTR SUBD RUN NWLY ALG EXTENED N LINE PIER ONLY	9
LEE COUNTY PO BOX 398 FORT MYERS FL 33902	24-46-23-W3-00023.0000 950 ESTERO BLVD FORT MYERS BEACH FL 33931	BEG NW COR BLK 8 BUSINESS CTR SUB RUN NWLY ALG EXTEN NLI PIER ON 22.0000	10
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00024.0000 201 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	FROM NWLY COR BLK 8 BUSINESS CENTER SUBD RUN NWLY ALG PROLONGATION OF	11
HOUSEBOAT LLC 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00202.0020 430 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOTS 2 THRU 5	12
MERSCHMAN I LLC 1421 E LAKE SHORE DR SPRINGFIELD IL 62712	24-46-23-W3-00202.0060 1011 THIRD ST #1-4 FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 6	13
HOUSEBOAT LLC 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00202.0090 1037/1039 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOTS 9 + 10	14
ALN BEACHVIEW LLC 615 CAPE CORAL PKWY W # 104 CAPE CORAL FL 33914	24-46-23-W3-00202.0110 1041 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOT 11	15
ALN BEACHVIEW LLC 151 MATANZAS ST UPSTAIRS FORT MYERS BEACH FL 33931	24-46-23-W3-00202.0120 1051 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 12 LESS OR2325/0292	16
FMB MATANZAS LLC 5880 STALEY RD FORT MYERS FL 33905	24-46-23-W3-00202.0130 CORNER LOT FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOTS 13 + 14 LESS R/W OR 2311/2803	17
FMB MATANZAS LLC 5880 STALEY RD FORT MYERS FL 33905	24-46-23-W3-00202.0150 1042/1044 SECOND ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 15 LESS R/W OR 2311/2803	18
PIERHOUSE-FT MYERS BEACH LTD 1000 ESTERO BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00202.0180 1030 SECOND ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 18	19
FREELAND FL HOLDINGS LLC PO BOX 656 ANTIOCH TN 37011	24-46-23-W3-00203.0010 340 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.3 PB 9 PG 9 LOT 1	20
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00203.0020 318/320 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 3 PB 9 PG 9 LOTS 2 THRU 6 + LTS 22 +23 + POR OF VAC ST	21
LIGHTHOUSE ISLAND RESORT INC 1051 5TH ST FORT MYERS BEACH FL 33931	24-46-23-W3-00203.0150 1060 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.3 PB 9 PG 9 LOT 15 LES R/W OR2353/3036	22

STINGRAYS RAW BAR INC 250 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00204.0010 250 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CTR LTS 1 + 2 BLK 4 LOTS 1 THRU 5 BLK 5 W OF ST RD 865 R/W + POR OF VAC ST	23
DIANNE HOLLAND TRUST + 570 KULAIWI DR WAILUKU HI 96793	24-46-23-W3-00204.0030 200 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 4 PB 9 PG 9 LTS 3 THRU 7 PT 8 + 9 + PT VAC ALLY	24
LIGHTHOUSE ISLAND RESORT INC 1051 FIFTH ST FORT MYERS BEACH FL 33931	24-46-23-W3-00205.0060 1051 FIFTH ST FORT MYERS BEACH FL 33931	PORTION OF BUSINESS CENTER BLK 3 & 5 PB 9 PG 9 AND A PORTION OF VACATED FOURTH ST AND PORTION OF VACATED 5TH AVE IN SEC 24 TWP 46 RNG 23	25
LEE COUNTY PO BOX 398 FORT MYERS FL 33902	24-46-23-W3-00206.0010 1113 ESTERO BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 6 PB9 PG9 LTS 1-4 LESS R/W + DESC OR 1904/4451	26
LEE COUNTY PO BOX 398 FORT MYERS FL 33902	24-46-23-W3-00206.0050 1054 FIFTH ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 6 PB 9 PG 9 LOT 5 R/W OR 1154 PG 1510	27
150 OLD SAN CARLOS BLVD LLC 4100 N 28TH TER HOLLYWOOD FL 33020	24-46-23-W3-00207.0000 150 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 7 PB 9 PG 9 ALL BLK 7	28
TOWN OF FORT MYERS BEACH FINANCE DEPT 2525 ESTERO BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00207.1000 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER R/W OF CENTER STREET LYING BETWEEN BLK 7 BLK 7 PB 9 PG 9	29
CHAVEZ CARLOS L TR 991 AQUA LN FORT MYERS FL 33919	24-46-23-W3-00208.0010 80 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.8 PB 9 PG 9 LOTS 1 + 2 LESS THE W 44	30
CHAVEZ CARLOS L TR 991 AQUA LN FORT MYERS FL 33919	24-46-23-W3-00208.002A 50 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 8 PB 9 PG 9 LOT PT 2	31
BENSON BRADFORD J TR 927 PRESCOTT ST FORT MYERS BEACH FL 33931	24-46-23-W3-00208.0040 1021 ESTERO BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.8 PB 9 PG 9 PT LOT 4 + ALL LOT 5	32
TOWN OF FORT MYERS BEACH FINANCE DEPT 2525 ESTERO BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00208.004A EASEMENT FORT MYERS BEACH FL 33931	PT LOT 4 AREA 2 SE 1/4 BUSINESS CENTER PB 9 PG 9 IN OR 297 P 427	33
KLC SURF LLC CHRISTOPHER PRIMEAU 4625 W EUCLID AVE TAMPA FL 33629	24-46-23-W3-00208.0060 1035 ESTERO BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.8 PB 9 PG 9 LT 7 + LOT 6 LESS WLY 6 FT LESS ROW OR3539 PG3351	34
BC III MASTERPIECE LLC 151 MATANZAS ST FORT MYERS BEACH FL 33931	24-46-23-W3-00208.0080 1028 FIFTH ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 8 PB 9 PG 9 LOTS 8 + 9	35
RFN CORP 2401 ESTERO BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-00208.0100 1018 FIFTH ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 8 PB 9 PG 9 LOT 10	36
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-0050A.0080 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK A PB 9 PG 25 LOTS 1 THRU 12 + VAC LAGOON R/W OR2858/1391 + OR2660/2863 +2736/3702 + BLK B PB 9 PG 40 LOT 1	37
BAHAN SUZANNE E + 169 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-0050A.0130 185 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK A PB 9 PG 25 LOT 13 + PT LOT 14	38

MAY SUZANNE E PO BOX 61176 FORT MYERS FL 33906	24-46-23-W3-0050A.0140 163 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK A PB 9 PG 25 PT LOT 14 + LOT 15	39
JENKINS CARROLL ANNE 3063 NORFOLK CR 23 RR6 TILLSONBURG ON N4G 4G9 CANADA	24-46-23-W3-0050A.016A 159/161 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 LOTS 16 + PT OF LT 17	40
151 OLD SAN CARLOS LLC 17840 SAN CARLOS BLVD FORT MYERS BEACH FL 33931	24-46-23-W3-0050A.018A 151 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 LOTS PT 18 + 19	41
BENSON BRADFORD J II TR 938 DEEP LAGOON LN FORT MYERS FL 33919	24-46-23-W3-0050A.018B 959/963 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK A PT LOTS 17 18 + 19	42
HOLIDAY COURT MOTEL LLC PO BOX 1118 LABELLE FL 33975	24-46-23-W3-0050A.0200 925 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK A PB 9 PG 25 LOTS 20 THRU 26	43
VENETIAN GARDENS CANAL PALERMO CIR FORT MYERS BEACH FL 33931	19-46-24-W4-00000.01CE SUBMERGED FORT MYERS BEACH FL 33931	VENETIAN GARDENS PB 6 PG 70 RIO DEL LIDO CANAL	44
VENETIAN GARDENS CANAL PALERMO CIR FORT MYERS BEACH FL 33931	19-46-24-W4-00000.02CE SUBMERGED FORT MYERS BEACH FL 33931	VENETIAN GARDENS PB 6 PG 70 CANAL GRANDE CANAL	45
VAN BURGESS ROBERT PO BOX 2717 FORT MYERS BEACH FL 33932	19-46-24-W4-00600.Y000 125/127 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK Y PB 6 PG 70 ALL BLK Y EXC NLY 11 FT	46
WILCOX LANCE 1339 SANTOS RD FORT MYERS BEACH FL 33931	19-46-24-W4-0060A.0340 1339 SANTOS RD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.A PB 6 PG 70 LOT 34	47
PARILLA DAVID R TR 1335 SANTOS RD FORT MYERS BEACH FL 33931	19-46-24-W4-0060A.0350 1335 SANTOS RD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK A PB 6 PG 70 LOT 35	48
CONNER CHARLES R & GAIL D 53 POMPANO ST FORT MYERS BEACH FL 33931	19-46-24-W4-0060A.0360 126 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK A PB 6 PG 70 LOT 36 + S 1/2 OF BLK X LESS THE N 20 FT	49
PARILLA DAVID R TR 1335 SANTOS RD FORT MYERS BEACH FL 33931	19-46-24-W4-0060A.0370 1321 SANTOS RD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.A PB 6 PG 70 LOT 37	50
KLC SURF LLC CHRISTOPHER PRIMEAU 4625 W EUCLID AVE TAMPA FL 33629	19-46-24-W4-0060B.0120 1365/1375 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 LOT 12	51
LANI KAI LP ROBERT G CONIDARIS 1400 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-0060B.0130 1345 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 LOT 13	52
LANI KAI LP ROBERT G CONIDARIS 1400 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-0060B.0140 1331 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 LOT 14	53
LANI KAI LP ROBERT G CONIDARIS 1400 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-0060B.0150 1325 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 LOTS 15	54
7-ELEVEN INC CORP INCOME TAX DEPT 3200 HYACKBERRY RD IRVING TX 75063	19-46-24-W4-0060B.0160 1301 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETAIN GARDENS BLK B PB 6 PG 70 LOTS 16 + 17	55

STRICK RICHARD A & 5804 PARK RIDGE CT FORT COLLINS CO 80528	19-46-24-W4-0060E.0090 130 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS PB 6/70 BLK E S 1/2 OF LOT 9 + ALL OF BLK X LESS S 20 FT	56
DAY BILLY WAYNE 3708 SHANNON RUN TRL LOUISVILLE KY 40299	19-46-24-W4-0060G.0170 155 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK G PB 6 PG 70 LOT 17	57
LUMP THOMAS F & ANN C 145 PALERMO CIR FORT MYERS BEACH FL 33931	19-46-24-W4-0060G.0180 145 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.G PB 6 PG 70 LOT 18	58
SLOMSKI STEVEN A & PO BOX 2428 PMB 25382 PENSACOLA FL 32513	19-46-24-W4-0060G.0190 139 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK G PB 6 PG 70 LOT 19 NLY 11 FT BLK Y	59
ZINKOSKY CHARLES H & 7475 LOCKLIN WEST BLOOMFIELD MI 48324	19-46-24-W4-0060H.0090 230 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 10 + S 1/2 LOT 9	60
MANNINO PATRICIA R 220 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0060H.0110 220 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.H PB 6 PG 70 LOT 11	61
JGT LLC 5617 HARBOUR CIR CAPE CORAL FL 33914	19-46-24-W4-0060H.0120 218 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 12	62
ANDERSON DEAN C & 904 7TH AVE NW JAMESTOWN ND 58401	19-46-24-W4-0060H.0130 214 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 13	63
HALE ALOHA LLC GEMA G HERNANDEZ PO BOX 395 PANACEA FL 32346	19-46-24-W4-0060H.0140 212 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 14	64
JACKSON SHARLENE V + 22 LOCH ERNE RD MCDUGALL ON P2A 2W7 CANADA	19-46-24-W4-0060H.0150 200 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 15	65
MORRIS CHARLES D 194 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0060H.0160 194 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 16	66
TEKULVE LAYNE JOSEPH PARAMOUNT LAWN AND LANDSCAPE 8900 GLENDALE MILFORD RD # A1 LOVELAND OH 45140	19-46-24-W4-0060H.0170 190 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 17	67
RILEY CHRISTOPHER M & 180 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0060H.0180 180 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 18	68
RILEY SUSAN K TR 180 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0060H.0190 170 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.H PB 6 PG 70 LOTS 19	69
BAILEY JAMES P & LANA C 162 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0060H.0200 162 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LT 20	70
SANDY BEACH L L C PO BOX 5 BELMOND IA 50421	19-46-24-W4-0060H.021A 150 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 21	71
NEUMANN SHEILA 146 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0060H.0220 146 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 22	72
140 PRIMO LLC SHEILA NEUMANN 146 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0060H.0230 140 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 23	73

SEABIRD RESIDENTIAL LLC 1709 SW 47TH TER CAPE CORAL FL 33914	19-46-24-W4-0060H.0240 136 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 24	74
HIGHLEY JAY E & MARY B 124 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0060H.0250 124 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 25	75
HIGHLEY MARY BETH TR 6620 ESTERO BLVD #1006 FORT MYERS BEACH FL 33931	19-46-24-W4-0060H.0260 122 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 PT LOT 26	76
KWSH RE LLC 2601 MULBERRY AVE MUSCATINE IA 52761	19-46-24-W4-0060H.026A 120 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 PT LOTS 26 31 32	77
ARLINGTON GREEN HOMES LLC 44 ALGONQUIN CT MARCO ISLAND FL 34145	19-46-24-W4-0060H.0270 121 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.H PB 6 PG 70 LOT 27	78
KALIDINDI RAMA USHA + 44354 APACHE CIR ASHBURN VA 20147	19-46-24-W4-0060H.0280 117 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 28 + PT LOTS 26 + 29	79
1249 ESTERO ADVENTURES LLC 290 BAHIA VIA FORT MYERS BEACH FL 33931	19-46-24-W4-0060H.0300 1249 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOTS 30 31+32 + PT LT 29 OR2414/2433	80
LANI KAI LP ROBERT G CONIDARIS 1400 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-0070D.0020 1400 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT BEACH PB 4 PG 45 BLKS D + E + VAC R/W DESC OR 1293 PG 1208	81
RIGHT CHOICE INVESTMENTS LLC 4448 KELLY DR STERLING HEIGHTS MI 48314	19-46-24-W4-0070F.0010 1250 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK LTS 1 + 2 + ESTRY 2.5 FT LT 3 + CRESCENT BEACH LTS 1-5 BLK F LESS ESTRLY 45FT OF NRTHLY 2.7 LT 3	82
OUR BEACH SAND LLC 12483 SUMMERWOOD DR FORT MYERS FL 33908	19-46-24-W4-0070F.001A 1270 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT BEACH BLK F PB 4 PG 45 PT LOTS 1 2 & 3 DESC IN OR 1319 PG 1459	83
GANIM PROPERTIES LLC 4666 MAIN ST BRIDGEPORT CT 06606	19-46-24-W4-0140A.0010 1240 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK PB 4 PG 39 BLK A LOTS 1 + 2 + 8 + 9	84
GANIM PROPERTIES LLC 4666 MAIN ST BRIDGEPORT CT 06606	19-46-24-W4-0140A.001A 200 CANAL ST FORT MYERS BEACH FL	CRESCENT PARK PB 4 PG 39 BLK C LOT 3 LESS E 2.5 FT	85
TPI-FMB SUITES LLC 1207 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-0150D.0050 1207 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LOTS 1 THRU 5	86
JAMES A + JEAN B BISCHOFF TRUS JEFF MAAAS 20468 ARDORE LN ESTERO FL 33928	19-46-24-W4-0150D.0060 141 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 6 + VAC R/W + LAND ADJ CANAL	87
GRIFFIS LLC 9051 E CHICAGO RD JEROME MI 49249	19-46-24-W4-0150D.0070 143 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 7 + VAC R/W + LAND ADJ CANAL	88
PATTON THOMAS D & 153 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0150D.0080 153 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 8 + VAC R/W + LAND ADJ CANAL	89
ALMEIDA ROBERT M + 163 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0150D.0090 163 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 9 + VAC R/W + LAND ADJ CANAL	90
BRIODY SUSAN S 167 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0150D.0100 167 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 10 + VAC R/W + LAND ADJ CANAL	91

TOWNLEY ARTHUR JAMES III PO BOX 2452 FORT MYERS BEACH FL 33932	19-46-24-W4-0150D.0110 171 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 11 + VAC R/W + LAND ADJ CANAL	92
TOWNLEY ARTHUR J III PO BOX 2452 FORT MYERS BEACH FL 33932	19-46-24-W4-0150D.0120 191 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LOTS 12 + VAC R/W + LAND ADJ CANAL	93
REDENIUS RICHARD R + 5218 WILLIAMS DR FORT MYERS BEACH FL 33931	19-46-24-W4-0150D.0130 201 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 13 + VAC R/W + LAND ADJ CANAL	94
SWENSEN RICHARD D & 207 PRIMO DR FORT MYERS BEACH FL 33931	19-46-24-W4-0150D.0140 207 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 14 + VAC R/W + LAND ADJ CANAL	95
ORONOCO ENTERPRISES LLC 10426 NW 28TH AVE ORONOCO MN 55960	19-46-24-W4-0150D.0150 215 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 15 + VAC R/W + LAND ADJ CANAL	96
JM3 PROPERTIES LLC 14225 TULANE STE BROOKFIELD WI 53005	19-46-24-W4-0150D.0180 225 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 18 + VAC R/W + LAND ADJ CANAL	97
FMB 239 PRIMO LLC PO BOX 2936 FORT MYERS BEACH FL 33932	19-46-24-W4-0150D.0190 239 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 19 + VAC R/W + LAND ADJ CANAL	98
REDENIUS RICHARD R & 5218 WILLIAMS DR FORT MYERS BEACH FL 33931	19-46-24-W4-0150D.0200 241/243 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4/46 LT20+ LT 21 LES N10+VAC ST+LAND ADJ	99
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-0150E.0010 1161/1165 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 PT LTS 1 + 2 OR0545/43LESR/W 2353/3036	100
DEEP DISH DOUGH LLC 328 BUCKLIN ST LA SALLE IL 61301	19-46-24-W4-0150E.001A 1167 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 BEG ON NLY SI CO RD 80 FT	101
MILLER CONRAD RE LLC PO BOX 80490 FORT WAYNE IN 46898	19-46-24-W4-0150E.0030 108/116 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LT 3	102
INVESTMENTS OF FMB LLC MARK DEIFT 560 NW 118 AVE PLANTATION FL 33325	19-46-24-W4-0150E.0040 118/122 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LT 4 + S10 FT LOT 5 LES R/W2353/3036	103
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-0150E.005B 140 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 N 40 FT OF LOT 5 + 32.67 FT ADJ + VAC + ADJ CANAL LESS R/W OR2353/3036	104
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-0150E.0060 150 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LOT 6 + 32.67 FT ADJ + VAC + ADJ CANAL LESS R/W OR2353/3036	105
RICHARD JOHN W + 152 CRESCENT ST FORT MYERS BEACH FL 33931	19-46-24-W4-0150E.0070 152 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LOT 7 + VAC R/W + LAND ADJ LESR/WOR2353/3036	106
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-0150E.0080 170 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LOT 8 + VAC R/W + LAND ADJ LESR/WOR2353/3036	107
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-0150E.0090 202 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LOTS 9 10 + VAC + LAND ADJ LESR/W2353/3036	108

250 FMB LLC 4517 BRYWOOD DR NAPLES FL 34119	19-46-24-W4-0150E.0110 250 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4/46 LT 11 + VAC R/W + LAND ADJ CANAL LESS R/W	109
TORGERSON ASHLEE MICHELLE PO BOX 5088 FORT MYERS BEACH FL 33932	19-46-24-W4-0150E.0120 270 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4/46 LT 12 VAC R/W + LAND ADJ CANAL LESS R/W DESC IN OR 2319/4512	110
GRANT JOSEPH H & DORIS M 320 CRESCENT ST FORT MYERS BEACH FL 33931	19-46-24-W4-0150E.0130 300 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LOT13+E40 FT LT 14+VAC LES R/W OR2366/2077	111
GRANT JOE H 320 CRESCENT ST FORT MYERS BEACH FL 33931	19-46-24-W4-0150E.014B 320 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 W 60 FT LT 14 + LT 15 + VAC R/W + ADJ LESS R/W DESC IN OR 2363/1290	112
LIGHTHOUSE ISLAND RESORT INC 1051 5TH ST FORT MYERS BEACH FL 33931	19-46-24-W4-0150E.016A 332 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LOT16+VAC R/W +LAND ADJ CANAL	113
REICH EUGENE E TR 6115 POND VIEW DR EXCELSIOR MN 55331	19-46-24-W4-0150E.0170 340 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PK ADD BLK E PB 4/46 LT 17 + S 20 FT OF LT 18 + VAC R/W LESS ROAD OR 2328/3484	114
CHIPPEWA LAND LLC 11577 HIBNER HARTLAND MI 48353	19-46-24-W4-0150E.0190 402/406 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 N 30 FT LOTS 18 + 19 + S 30 FT LOT 20 LESS R/W 2353/3036 LESS R/W OR 2370/0201	115
FMB MATANZAS LLC 5880 STALEY RD FORT MYERS FL 33905	19-46-24-W4-0150E.0210 414/416 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADDN BLK E PB4/46 PT LTS 20THRU25LT 26 LES R/W OR 2353 PG 3036 + OR 3189 PG 3751	116
CRESCENT SHORE CONDO ASSOC PO BOX 2990 FORT MYERS BEACH FL 33932	19-46-24-W4-02600.00CE CRESCENT SHORE C/E FORT MYERS BEACH FL 33931	A CONDO LOCATED IN SEC 19 TWP 46 RGE 24 AS DESC IN OR 1464 PG 445 COMMON ELEMENTS	117
TOWN OF FORT MYERS BEACH 103 15TH AVE NW STE 200 WILLMAR MN 56201	19-46-24-W4-U0498.2607 ESTERO BLVD FORT MYERS BEACH FL 33931	PARCEL D AS DESC IN INST 2020000071854 INCLUDES LOTS 3 + 7 AS REC IN PLAT BK 4 PG 39 AND DESC IN INST 2023000234096	118
1300 ESTERO BLVD LLC 32 BAYVIEW BLVD FORT MYERS BEACH FL 33931	19-46-24-W4-02600.1010 1300 ESTERO BLVD #101 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNITS 101 102 + 103	119
BEYER TAMMY E TR 9656 HALYARDS CT # 24 FORT MYERS FL 33919	19-46-24-W4-02600.1040 1300 ESTERO BLVD #104 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 104	119
ANDRESEN EDWIN TR 7960 PRESERVATION DR INDIANAPOLIS IN 46278	19-46-24-W4-02600.1050 1300 ESTERO BLVD #105 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 105	119
BOCCELLA SALVATORE 4 POINT VIEW CT SICKLERVILLE NJ 08081	19-46-24-W4-02600.1060 1300 ESTERO BLVD #106 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 106	119
JOHNSON NANCY ANN L/E 9 NANCY LN FORT MYERS BEACH FL 33931	19-46-24-W4-02600.2010 1300 ESTERO BLVD #201 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 201	119
HECK LLC 15561 CATALPA COVE DR FORT MYERS FL 33908	19-46-24-W4-02600.2020 1300 ESTERO BLVD #202 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 202	119

CONANT DONNA TR 8122 S FOREST HILL CIR FRANKLIN WI 53132	19-46-24-W4-02600.2030 1300 ESTERO BLVD #203 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 203	119
DENNIS R + CYNTHIA L LOKEN TRU 106 ICHABOD LN MANKATO MN 56001	19-46-24-W4-02600.2040 1300 ESTERO BLVD #204 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 204	119
LANDOLFI STEVEN J 22 VETO ST PROVIDENCE RI 02908	19-46-24-W4-02600.2050 1300 ESTERO BLVD #205 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 205	119
NIEMEIER RYAN & SUMMER 106 S WALNUT ST LA CRESCENT MN 55947	19-46-24-W4-02600.2060 1300 ESTERO BLVD #206 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 206	119

1005 ESTERO LLC
1005 ESTERO BLVD
FORT MYERS BEACH FL 33931

KALYMNOUS PARTNERSHIP LLP
1001 ESTERO BLVD
FORT MYERS BEACH FL 33931

CLOWNFISH RESTAURANT HOLDINGS
11201 COORPORATE CIRCLE N
SAINT PETERSBURG FL 33716

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

PRESAUD PROPERTIES FL
361 SEMINOLE WAY
FORT MYERS BEACH FL 33931

PERSAUD PROPERTIES FL INVESTME
361 SEMINOLE WAY
FORT MYERS BEACH FL 33931

BENCIN ENTERPRISES INC
BEACH ACCOUNTING
17274 SAN CARLOS BLVD #202
FORT MYERS BEACH FL 33931

WHITAKER WILLIAM D &
15820 SAN ANTONIO CT
FORT MYERS FL 33908

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

HOUSEBOAT LLC
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

MERSCHMAN I LLC
1421 E LAKE SHORE DR
SPRINGFIELD IL 62712

HOUSEBOAT LLC
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

ALN BEACHVIEW LLC
615 CAPE CORAL PKWY W # 104
CAPE CORAL FL 33914

ALN BEACHVIEW LLC
151 MATANZAS ST UPSTAIRS
FORT MYERS BEACH FL 33931

FMB MATANZAS LLC
5880 STALEY RD
FORT MYERS FL 33905

FMB MATANZAS LLC
5880 STALEY RD
FORT MYERS FL 33905

PIERHOUSE-FT MYERS BEACH LTD
1000 ESTERO BLVD
FORT MYERS BEACH FL 33931

FREELAND FL HOLDINGS LLC
PO BOX 656
ANTIOCH TN 37011

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

LIGHTHOUSE ISLAND RESORT INC
1051 5TH ST
FORT MYERS BEACH FL 33931

STINGRAYS RAW BAR INC
250 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

DIANNE HOLLAND TRUST +
570 KULAIWI DR
WAILUKU HI 96793

LIGHTHOUSE ISLAND RESORT INC
1051 FIFTH ST
FORT MYERS BEACH FL 33931

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

150 OLD SAN CARLOS BLVD LLC
4100 N 28TH TER
HOLLYWOOD FL 33020

TOWN OF FORT MYERS BEACH
FINANCE DEPT
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

CHAVEZ CARLOS L TR
991 AQUA LN
FORT MYERS FL 33919

CHAVEZ CARLOS L TR
991 AQUA LN
FORT MYERS FL 33919

BENSON BRADFORD J TR
927 PRESCOTT ST
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH
FINANCE DEPT
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

KLC SURF LLC
CHRISTOPHER PRIMEAU
4625 W EUCLID AVE
TAMPA FL 33629

BC III MASTERPIECE LLC
151 MATANZAS ST
FORT MYERS BEACH FL 33931

RFN CORP
2401 ESTERO BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

BAHAN SUZANNE E +
169 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

MAY SUZANNE E
PO BOX 61176
FORT MYERS FL 33906

JENKINS CARROLL ANNE
3063 NORFOLK CR 23 RR6
TILLSONBURG ON N4G 4G9
CANADA

151 OLD SAN CARLOS LLC
17840 SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

BENSON BRADFORD J II TR
938 DEEP LAGOON LN
FORT MYERS FL 33919

HOLIDAY COURT MOTEL LLC
PO BOX 1118
LABELLE FL 33975

VENETIAN GARDENS CANAL
PALERMO CIR
FORT MYERS BEACH FL 33931

VENETIAN GARDENS CANAL
PALERMO CIR
FORT MYERS BEACH FL 33931

VAN BURGESS ROBERT
PO BOX 2717
FORT MYERS BEACH FL 33932

WILCOX LANCE
1339 SANTOS RD
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

CONNER CHARLES R & GAIL D
53 POMPAÑO ST
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

KLC SURF LLC
CHRISTOPHER PRIMEAU
4625 W EUCLID AVE
TAMPA FL 33629

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

7-ELEVEN INC
CORP INCOME TAX DEPT
3200 HYACKBERRY RD
IRVING TX 75063

STRICK RICHARD A &
5804 PARK RIDGE CT
FORT COLLINS CO 80528

DAY BILLY WAYNE
3708 SHANNON RUN TRL
LOUISVILLE KY 40299

LUMP THOMAS F & ANN C
145 PALERMO CIR
FORT MYERS BEACH FL 33931

SLOMSKI STEVEN A &
PO BOX 2428 PMB 25382
PENSACOLA FL 32513

ZINKOSKY CHARLES H &
7475 LOCKLIN
WEST BLOOMFIELD MI 48324

MANNINO PATRICIA R
220 PRIMO DR
FORT MYERS BEACH FL 33931

JGT LLC
5617 HARBOUR CIR
CAPE CORAL FL 33914

ANDERSON DEAN C &
904 7TH AVE NW
JAMESTOWN ND 58401

HALE ALOHA LLC
GEMA G HERNANDEZ
PO BOX 395
PANACEA FL 32346

JACKSON SHARLENE V +
22 LOCH ERNE RD
MCDUGALL ON P2A 2W7
CANADA

MORRIS CHARLES D
194 PRIMO DR
FORT MYERS BEACH FL 33931

TEKULVE LAYNE JOSEPH
PARAMOUNT LAWN AND LANDSCAPE
8900 GLENDALE MILFORD RD # A1
LOVELAND OH 45140

RILEY CHRISTOPHER M &
180 PRIMO DR
FORT MYERS BEACH FL 33931

RILEY SUSAN K TR
180 PRIMO DR
FORT MYERS BEACH FL 33931

BAILEY JAMES P & LANA C
162 PRIMO DR
FORT MYERS BEACH FL 33931

SANDY BEACH L L C
PO BOX 5
BELMOND IA 50421

NEUMANN SHEILA
146 PRIMO DR
FORT MYERS BEACH FL 33931

140 PRIMO LLC
SHEILA NEUMANN
146 PRIMO DR
FORT MYERS BEACH FL 33931

SEABIRD RESIDENTIAL LLC
1709 SW 47TH TER
CAPE CORAL FL 33914

HIGHLEY JAY E & MARY B
124 PRIMO DR
FORT MYERS BEACH FL 33931

HIGHLEY MARY BETH TR
6620 ESTERO BLVD #1006
FORT MYERS BEACH FL 33931

KWSH RE LLC
2601 MULBERRY AVE
MUSCATINE IA 52761

ARLINGTON GREEN HOMES LLC
44 ALGONQUIN CT
MARCO ISLAND FL 34145

KALIDINDI RAMA USHA +
44354 APACHE CIR
ASHBURN VA 20147

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

RIGHT CHOICE INVESTMENTS LLC
4448 KELLY DR
STERLING HEIGHTS MI 48314

OUR BEACH SAND LLC
12483 SUMMERWOOD DR
FORT MYERS FL 33908

GANIM PROPERTIES LLC
4666 MAIN ST
BRIDGEPORT CT 06606

GANIM PROPERTIES LLC
4666 MAIN ST
BRIDGEPORT CT 06606

TPI-FMB SUITES LLC
1207 ESTERO BLVD
FORT MYERS BEACH FL 33931

JAMES A + JEAN B BISCHOFF TRUS
JEFF MAAAS
20468 ARDORE LN
ESTERO FL 33928

GRIFFIS LLC
9051 E CHICAGO RD
JEROME MI 49249

PATTON THOMAS D &
153 PRIMO DR
FORT MYERS BEACH FL 33931

ALMEIDA ROBERT M +
163 PRIMO DR
FORT MYERS BEACH FL 33931

BRIODY SUSAN S
167 PRIMO DR
FORT MYERS BEACH FL 33931

TOWNLEY ARTHUR JAMES III
PO BOX 2452
FORT MYERS BEACH FL 33932

TOWNLEY ARTHUR J III
PO BOX 2452
FORT MYERS BEACH FL 33932

REDENIUS RICHARD R +
5218 WILLIAMS DR
FORT MYERS BEACH FL 33931

SWENSEN RICHARD D &
207 PRIMO DR
FORT MYERS BEACH FL 33931

ORONOCO ENTERPRISES LLC
10426 NW 28TH AVE
ORONOCO MN 55960

JM3 PROPERTIES LLC
14225 TULANE STE
BROOKFIELD WI 53005

FMB 239 PRIMO LLC
PO BOX 2936
FORT MYERS BEACH FL 33932

REDENIUS RICHARD R &
5218 WILLIAMS DR
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

DEEP DISH DOUGH LLC
328 BUCKLIN ST
LA SALLE IL 61301

MILLER CONRAD RE LLC
PO BOX 80490
FORT WAYNE IN 46898

INVESTMENTS OF FMB LLC
MARK DEIFT
560 NW 118 AVE
PLANTATION FL 33325

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W +
152 CRESCENT ST
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

250 FMB LLC
4517 BRYWOOD DR
NAPLES FL 34119

TORGERSON ASHLEE MICHELLE
PO BOX 5088
FORT MYERS BEACH FL 33932

GRANT JOSEPH H & DORIS M
320 CRESCENT ST
FORT MYERS BEACH FL 33931

GRANT JOE H
320 CRESCENT ST
FORT MYERS BEACH FL 33931

LIGHTHOUSE ISLAND RESORT INC
1051 5TH ST
FORT MYERS BEACH FL 33931

REICH EUGENE E TR
6115 POND VIEW DR
EXCELSIOR MN 55331

CHIPPEWA LAND LLC
11577 HIBNER
HARTLAND MI 48353

FMB MATANZAS LLC
5880 STALEY RD
FORT MYERS FL 33905

CRESCENT SHORE CONDO ASSOC
PO BOX 2990
FORT MYERS BEACH FL 33932

TOWN OF FORT MYERS BEACH
103 15TH AVE NW STE 200
WILLMAR MN 56201

1300 ESTERO BLVD LLC
32 BAYVIEW BLVD
FORT MYERS BEACH FL 33931

BEYER TAMMY E TR
9656 HALYARDS CT # 24
FORT MYERS FL 33919

ANDRESEN EDWIN TR
7960 PRESERVATION DR
INDIANAPOLIS IN 46278

BOCCELLA SALVATORE
4 POINT VIEW CT
SICKLERVILLE NJ 08081

JOHNSON NANCY ANN L/E
9 NANCY LN
FORT MYERS BEACH FL 33931

HECK LLC
15561 CATALPA COVE DR
FORT MYERS FL 33908

CONANT DONNA TR
8122 S FOREST HILL CIR
FRANKLIN WI 53132

DENNIS R + CYNTHIA L LOKEN TRU
106 ICHABOD LN
MANKATO MN 56001

LANDOLFI STEVEN J
22 VETO ST
PROVIDENCE RI 02908

NIEMEIER RYAN & SUMMER
106 S WALNUT ST
LA CRESCENT MN 55947

1005 ESTERO LLC
1005 ESTERO BLVD
FORT MYERS BEACH FL 33931

KALYMNOUS PARTNERSHIP LLP
1001 ESTERO BLVD
FORT MYERS BEACH FL 33931

CLOWNFISH RESTAURANT HOLDINGS
11201 COORPORATE CIRCLE N
SAINT PETERSBURG FL 33716

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

PRESAUD PROPERTIES FL
361 SEMINOLE WAY
FORT MYERS BEACH FL 33931

PERSAUD PROPERTIES FL INVESTME
361 SEMINOLE WAY
FORT MYERS BEACH FL 33931

BENCIN ENTERPRISES INC
BEACH ACCOUNTING
17274 SAN CARLOS BLVD #202
FORT MYERS BEACH FL 33931

WHITAKER WILLIAM D &
15820 SAN ANTONIO CT
FORT MYERS FL 33908

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

HOUSEBOAT LLC
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

MERSCHMAN I LLC
1421 E LAKE SHORE DR
SPRINGFIELD IL 62712

HOUSEBOAT LLC
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

ALN BEACHVIEW LLC
615 CAPE CORAL PKWY W # 104
CAPE CORAL FL 33914

ALN BEACHVIEW LLC
151 MATANZAS ST UPSTAIRS
FORT MYERS BEACH FL 33931

FMB MATANZAS LLC
5880 STALEY RD
FORT MYERS FL 33905

FMB MATANZAS LLC
5880 STALEY RD
FORT MYERS FL 33905

PIERHOUSE-FT MYERS BEACH LTD
1000 ESTERO BLVD
FORT MYERS BEACH FL 33931

FREELAND FL HOLDINGS LLC
PO BOX 656
ANTIOCH TN 37011

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

LIGHTHOUSE ISLAND RESORT INC
1051 5TH ST
FORT MYERS BEACH FL 33931

STINGRAYS RAW BAR INC
250 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

DIANNE HOLLAND TRUST +
570 KULAIWI DR
WAILUKU HI 96793

LIGHTHOUSE ISLAND RESORT INC
1051 FIFTH ST
FORT MYERS BEACH FL 33931

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

150 OLD SAN CARLOS BLVD LLC
4100 N 28TH TER
HOLLYWOOD FL 33020

TOWN OF FORT MYERS BEACH
FINANCE DEPT
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

CHAVEZ CARLOS L TR
991 AQUA LN
FORT MYERS FL 33919

CHAVEZ CARLOS L TR
991 AQUA LN
FORT MYERS FL 33919

BENSON BRADFORD J TR
927 PRESCOTT ST
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH
FINANCE DEPT
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

KLC SURF LLC
CHRISTOPHER PRIMEAU
4625 W EUCLID AVE
TAMPA FL 33629

BC III MASTERPIECE LLC
151 MATANZAS ST
FORT MYERS BEACH FL 33931

RFN CORP
2401 ESTERO BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

BAHAN SUZANNE E +
169 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

MAY SUZANNE E
PO BOX 61176
FORT MYERS FL 33906

JENKINS CARROLL ANNE
3063 NORFOLK CR 23 RR6
TILLSONBURG ON N4G 4G9
CANADA

151 OLD SAN CARLOS LLC
17840 SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

BENSON BRADFORD J II TR
938 DEEP LAGOON LN
FORT MYERS FL 33919

HOLIDAY COURT MOTEL LLC
PO BOX 1118
LABELLE FL 33975

VENETIAN GARDENS CANAL
PALERMO CIR
FORT MYERS BEACH FL 33931

VENETIAN GARDENS CANAL
PALERMO CIR
FORT MYERS BEACH FL 33931

VAN BURGESS ROBERT
PO BOX 2717
FORT MYERS BEACH FL 33932

WILCOX LANCE
1339 SANTOS RD
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

CONNER CHARLES R & GAIL D
53 POMPAÑO ST
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

KLC SURF LLC
CHRISTOPHER PRIMEAU
4625 W EUCLID AVE
TAMPA FL 33629

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

7-ELEVEN INC
CORP INCOME TAX DEPT
3200 HYACKBERRY RD
IRVING TX 75063

STRICK RICHARD A &
5804 PARK RIDGE CT
FORT COLLINS CO 80528

DAY BILLY WAYNE
3708 SHANNON RUN TRL
LOUISVILLE KY 40299

LUMP THOMAS F & ANN C
145 PALERMO CIR
FORT MYERS BEACH FL 33931

SLOMSKI STEVEN A &
PO BOX 2428 PMB 25382
PENSACOLA FL 32513

ZINKOSKY CHARLES H &
7475 LOCKLIN
WEST BLOOMFIELD MI 48324

MANNINO PATRICIA R
220 PRIMO DR
FORT MYERS BEACH FL 33931

JGT LLC
5617 HARBOUR CIR
CAPE CORAL FL 33914

ANDERSON DEAN C &
904 7TH AVE NW
JAMESTOWN ND 58401

HALE ALOHA LLC
GEMA G HERNANDEZ
PO BOX 395
PANACEA FL 32346

JACKSON SHARLENE V +
22 LOCH ERNE RD
MCDOUGALL ON P2A 2W7
CANADA

MORRIS CHARLES D
194 PRIMO DR
FORT MYERS BEACH FL 33931

TEKULVE LAYNE JOSEPH
PARAMOUNT LAWN AND LANDSCAPE
8900 GLENDALE MILFORD RD # A1
LOVELAND OH 45140

RILEY CHRISTOPHER M &
180 PRIMO DR
FORT MYERS BEACH FL 33931

RILEY SUSAN K TR
180 PRIMO DR
FORT MYERS BEACH FL 33931

BAILEY JAMES P & LANA C
162 PRIMO DR
FORT MYERS BEACH FL 33931

SANDY BEACH L L C
PO BOX 5
BELMOND IA 50421

NEUMANN SHEILA
146 PRIMO DR
FORT MYERS BEACH FL 33931

140 PRIMO LLC
SHEILA NEUMANN
146 PRIMO DR
FORT MYERS BEACH FL 33931

SEABIRD RESIDENTIAL LLC
1709 SW 47TH TER
CAPE CORAL FL 33914

HIGHLEY JAY E & MARY B
124 PRIMO DR
FORT MYERS BEACH FL 33931

HIGHLEY MARY BETH TR
6620 ESTERO BLVD #1006
FORT MYERS BEACH FL 33931

KWSH RE LLC
2601 MULBERRY AVE
MUSCATINE IA 52761

ARLINGTON GREEN HOMES LLC
44 ALGONQUIN CT
MARCO ISLAND FL 34145

KALIDINDI RAMA USHA +
44354 APACHE CIR
ASHBURN VA 20147

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

RIGHT CHOICE INVESTMENTS LLC
4448 KELLY DR
STERLING HEIGHTS MI 48314

OUR BEACH SAND LLC
12483 SUMMERWOOD DR
FORT MYERS FL 33908

GANIM PROPERTIES LLC
4666 MAIN ST
BRIDGEPORT CT 06606

GANIM PROPERTIES LLC
4666 MAIN ST
BRIDGEPORT CT 06606

TPI-FMB SUITES LLC
1207 ESTERO BLVD
FORT MYERS BEACH FL 33931

JAMES A + JEAN B BISCHOFF TRUS
JEFF MAAAS
20468 ARDORE LN
ESTERO FL 33928

GRIFFIS LLC
9051 E CHICAGO RD
JEROME MI 49249

PATTON THOMAS D &
153 PRIMO DR
FORT MYERS BEACH FL 33931

ALMEIDA ROBERT M +
163 PRIMO DR
FORT MYERS BEACH FL 33931

BRIODY SUSAN S
167 PRIMO DR
FORT MYERS BEACH FL 33931

TOWNLEY ARTHUR JAMES III
PO BOX 2452
FORT MYERS BEACH FL 33932

TOWNLEY ARTHUR J III
PO BOX 2452
FORT MYERS BEACH FL 33932

REDENIUS RICHARD R +
5218 WILLIAMS DR
FORT MYERS BEACH FL 33931

SWENSEN RICHARD D &
207 PRIMO DR
FORT MYERS BEACH FL 33931

ORONOCO ENTERPRISES LLC
10426 NW 28TH AVE
ORONOCO MN 55960

JM3 PROPERTIES LLC
14225 TULANE STE
BROOKFIELD WI 53005

FMB 239 PRIMO LLC
PO BOX 2936
FORT MYERS BEACH FL 33932

REDENIUS RICHARD R &
5218 WILLIAMS DR
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

DEEP DISH DOUGH LLC
328 BUCKLIN ST
LA SALLE IL 61301

MILLER CONRAD RE LLC
PO BOX 80490
FORT WAYNE IN 46898

INVESTMENTS OF FMB LLC
MARK DEIFT
560 NW 118 AVE
PLANTATION FL 33325

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W +
152 CRESCENT ST
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

250 FMB LLC
4517 BRYWOOD DR
NAPLES FL 34119

TORGERSON ASHLEE MICHELLE
PO BOX 5088
FORT MYERS BEACH FL 33932

GRANT JOSEPH H & DORIS M
320 CRESCENT ST
FORT MYERS BEACH FL 33931

GRANT JOE H
320 CRESCENT ST
FORT MYERS BEACH FL 33931

LIGHTHOUSE ISLAND RESORT INC
1051 5TH ST
FORT MYERS BEACH FL 33931

REICH EUGENE E TR
6115 POND VIEW DR
EXCELSIOR MN 55331

CHIPPEWA LAND LLC
11577 HIBNER
HARTLAND MI 48353

FMB MATANZAS LLC
5880 STALEY RD
FORT MYERS FL 33905

CRESCENT SHORE CONDO ASSOC
PO BOX 2990
FORT MYERS BEACH FL 33932

TOWN OF FORT MYERS BEACH
103 15TH AVE NW STE 200
WILLMAR MN 56201

1300 ESTERO BLVD LLC
32 BAYVIEW BLVD
FORT MYERS BEACH FL 33931

BEYER TAMMY E TR
9656 HALYARDS CT # 24
FORT MYERS FL 33919

ANDRESEN EDWIN TR
7960 PRESERVATION DR
INDIANAPOLIS IN 46278

BOCCELLA SALVATORE
4 POINT VIEW CT
SICKLERVILLE NJ 08081

JOHNSON NANCY ANN L/E
9 NANCY LN
FORT MYERS BEACH FL 33931

HECK LLC
15561 CATALPA COVE DR
FORT MYERS FL 33908

CONANT DONNA TR
8122 S FOREST HILL CIR
FRANKLIN WI 53132

DENNIS R + CYNTHIA L LOKEN TRU
106 ICHABOD LN
MANKATO MN 56001

LANDOLFI STEVEN J
22 VETO ST
PROVIDENCE RI 02908

NIEMEIER RYAN & SUMMER
106 S WALNUT ST
LA CRESCENT MN 55947

RESOLUTION NUMBER 23-80

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230052 TO AMEND RESOLUTION 13-09 CONDITIONS OF APPROVAL WHICH LIMITED THE AREA OF CONSUMPTION ON PREMISES TO THE BUILDING AND DID NOT ALLOW LIVE MUSIC FOR THE PROPERTY LOCATED AT 1249 ESTERO BLVD.; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, applicant Greg von Krumreig, on behalf of owner Mike Miller, is requesting amendment of the Conditions of Approval for Res. 13-09, removing #1 *Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and proposed new lower outdoor deck depicted on the attached Exhibit F.* and #3 *No live music is permitted. Outdoor televisions shall be limited to from 11:00 AM to 11:00 PM daily.*; and

WHEREAS, the STRAP number for the subject property is 19-46-24-W4-0060H.0300; and

WHEREAS, the Property is located in the "Pedestrian Commercial" category of the Future Land Use Map of the Comprehensive Plan and the "Downtown" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on June 13, 2023, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA voted 6-1 to recommend approval of the amendment with conditions; and

WHEREAS, on August 07, 2023 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-88 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve with conditions.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did meet its burden of proof that the requested amendment does meet the requirements of the Town Comprehensive Plan and LDC, and approving with conditions the amendment is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES WITH CONDITIONS amendment of Res. 13-09.

Section 3. In approving with conditions the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Whether there exist changed or changing conditions which make approval of the request appropriate.
- B. The testimony of any applicant.
- C. The recommendation of staff and of the local planning agency.
- D. The testimony of the public.
- E. Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
- F. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- G. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- H. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- I. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

Section 4. If the Town Council approves the requested amendment, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

B. The amendment of Conditions of Approval for Res. 13-09 shall be temporary for a period of 6 months from the date of this resolution or until construction of a new building has begun, whichever happens first.

C. Live music is allowed on 1249 Estero Blvd. but drums are not allowed as part of the entertainment.

D. Amplified music is allowed on 1249 Estero Blvd. until 6:30pm Sunday through Thursday, after which amplified music may not be louder than 65-decibels as long as the other conditions of approval are upheld.

E. Amplified music is allowed on 1249 Estero Blvd. Friday and Saturday and will be controlled by the Town's noise ordinance (LDC sec. 14-23; Table-1), as long as the other conditions of approval are upheld.

F. The variance shall only apply to the lot as shown on the provided site plan.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Veach and seconded by Council Member King, and upon being put to a roll vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Bill Veach, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 7th day of August 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers

Dan Allers, Mayor

ATTEST:

AMY BAKER

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Becky Vose

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 26th day of September 2023.

Signature: Dan Allers
Dan Allers (Sep 26, 2023 12:46 EDT)
Email: allersd@fmbgov.com

Signature: Becky Vose
Becky Vose (Sep 26, 2023 17:55 EDT)
Email: bvose@voselaw.com

Signature: Amy Baker
AMY BAKER (Sep 28, 2023 15:20 EDT)
Email: AMY@FMBGOV.COM

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 13- 09
SEZ2013-0001 - The Beached Whale

WHEREAS, applicant Marty Harrity has requested approval of a Special Exception in the DOWNTOWN zoning district to permit outdoor consumption on premises to include 626 ± square feet of a proposed new deck at the front of the existing building on the subject property; and

WHEREAS, the subject property is located at 1249 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0060H.0300 and the legal description of the subject property is VENETIAN GARDENS BLK H PB 6 PG 70 LOTS 30 31+32+ PT LT 29; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on April 9, 2013; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on June 3, 2013, at which time the Town Council gave full and complete consideration to the request of the Applicant, LPA Resolution 2013-003, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 30-88.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting variances, the Town Council makes the following findings of fact and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for a Special Exception in the DOWNTOWN zoning district to permit outdoor consumption on premises to include 626 square feet or less of a proposed new deck at the front of the existing building on the subject property subject to the following conditions:

CONDITIONS OF APPROVAL:

1. *Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and proposed new lower outdoor deck depicted on the attached Exhibit F.*

2. *Hours of operation for consumption on premises shall be limited to the hours of 7:00 AM to 2:00 AM, daily for inside the building and 11:00 AM to 11:00 PM daily for the lower outdoor deck area.*
3. *No live music is permitted. Outdoor televisions shall be limited to from 11:00 AM to 11:00 PM daily.*
4. *Any proposed roof overhangs and/or projections must meet the Commercial Design Standards set forth in LDC Section 34-991 and specifically Section 34-995(e).*
5. *All work proposed to be done will require Limited Review Development Order and any other permits determined to be necessary at the time of permitting.*
6. *No required parking spaces, including required ADA spaces, may extend into the Town or Lee County right-of-way.*
7. *The applicant shall provide an impervious retention area under the proposed outdoor deck to assist with stormwater retention.*
8. *The outdoor seating on the proposed outdoor deck will at all times comply with current building, fire and life safety codes for tables and chairs.*
9. *All doors providing access from the existing restaurant to the proposed outdoor deck must remained closed, aside from regular ingress and egress functions, when indoor music is being played.*

FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions **do not** exist that make the requested approval, as conditioned, appropriate;
2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources;
5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property;
6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember List and seconded by Councilmember Raymond, and upon being put to a vote, the result was as follows:

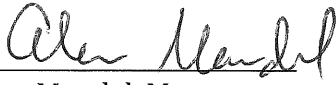
Alan Mandel, Mayor
Jo List
Dan Andre

AYE
AYE
AYE

Joe Kosinski, Vice Mayor
Bob Raymond

ABSTAIN
AYE

DULY PASSED AND ADOPTED THIS 3rd day of **JUNE, 2013.**

By: 
Alan Mandel, Mayor

Approved as to legal sufficiency:

By: 
Fowler, White, Boggs
Town Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please check for meeting changes on our website WWW.FMBGOV.com.

TIME: 9 AM

DATE: January 8, 2023

CASE: CPD amendment 20230227

ADDRESS: 1170 Estero Blvd (all associated Margaritaville CPD properties)

APPLICANT: TPI-FMB LLC/ STEVEN C HARTSELL, ESQUIRE

REQUEST: The applicant is requesting an amendment of Ord. 18-04 'Conditions of Approval' #6; #12 (f) and (g); and #18 (a) and (b).

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



Town of Fort Myers Beach
Community Development Services - Planning Division
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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

1. **Requested Motion:**

Meeting Date: January 8, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230212 TO ALLOW AN ELEVATED EMERGENCY GENERATOR CLOSER TO THE ESTERO BOULEVARD STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING FOR THE PROPERTY LOCATED AT 6642 ESTERO BLVD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The elevated emergency generator is proposed forward of the primary structure, this requires a variance.

What the action accomplishes:

Approval of the variance will allow the elevated emergency generator to be constructed forward of the building.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

Curt Brenner, the applicant for Pointe Estero Condominium Association, Inc. located at 6642 Estero Boulevard, is requesting a variance from the Town's Land Development Code (LDC): Section 34-1174(b) which prohibits location of an accessory structure, closer to street right-of-way line than the principal building in RM zoning district.

Attachments:

1. 23-186, VAR20230212 6642 Estero
2. Staff report
3. Exhibit A: Revised _SitePlan
4. Exhibit B: Landscape Plans
5. Exhibit C: Survey
6. Exhibit D: Complete application packet
7. Exhibit E TC postcard

Financial Impact:

unknown

6. **Alternative Action**

Recommend approval with conditions, recommend denial

7. **Management Recommendations:**

Approval with conditions

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning

Created/Initiated - 12/27/2023

Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney

Approved - 12/27/2023
Final Approval - 12/27/2023

RESOLUTION NUMBER 23-186

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230212 TO ALLOW AN ELEVATED EMERGENCY GENERATOR CLOSER TO THE ESTERO BOULEVARD STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING FOR THE PROPERTY LOCATED AT 6642 ESTERO BLVD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Curt Brenner, Applicant for owner Pointe Estero Condominium Association, Inc., is requesting a variance from LDC 3434-1174(b) which prohibits location of accessory structures, including emergency generators, closer to the street right-of-way line than the principal building; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W4-02500.00CE; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Multi-Family" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on December 19, 2023, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA voted to recommend approval with conditions of the variance; and

WHEREAS, on January 8, 2023, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES the variance from LDC 34-1174(b) which prohibits location of accessory structures, including emergency generators, closer to the street right-of-way line than the principal building in RM zoning district.

Section 3. In approving/ approving with conditions/ denying the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

- A. There are/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/ is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval of the variance are/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/ is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.
- D. The granting of the variance will/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. The applicant shall provide screening or decorative features, of some kind, to limit the visual impact of the structure from Estero Blvd and from the neighboring property.
- B. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Gretchen R. H. Vose., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of January 2024.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20230212

CASE NAME: 6642 Estero Boulevard; requesting a variance from LDC 34-1174(b) which prohibits location of accessory uses, including elevated emergency generators, closer to street right-of-way line than the principal building in RM zoning district.

TOWN COUNCIL HEARING DATE: January 9, 2024

LPA HEARING DATE: December 19, 2023

STAFF RECOMMENDATION: APPROVAL

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Curt Brenner, (Applicant)/ Pointe Estero Condominium Association, Inc. (Owner)

Request: Relief from LDC 34-1174(b) which prohibits location of accessory structures, including emergency generators on stands, closer to street right-of-way line than the principal building in RM zoning district.

The lot is a triangular property on the west/beach side of Estero Blvd. The property currently includes a multi-family structure, and the Applicant is requesting a variance from LDC 34-1174(b) to allow construction of an elevated emergency generator in the front yard along Estero Blvd.

Subject property: See attached site plan

Physical Address: 6642 Estero Boulevard

STRAP #: 34-46-24-W4-02500.00CE

FLU: Mixed Residential

Zoning: Residential Multi-family (RM)

Adjacent zoning and land uses:

North: MIXED RESIDENTIAL
Commercial Resort (CR)

South: MIXED RESIDENTIAL
Residential Multi-family (RM)

East: MIXED RESIDENTIAL
Residential Multi-family (RM)

West: RECREATIONAL AND GULF OF MEXICO
Environmental Conservation (EC) and Gulf of Mexico

II. BACKGROUND AND ANALYSIS

Background:

Curt Brenner, the applicant for Pointe Estero Condominium Association, Inc. located at 6642 Estero Boulevard, is requesting a variance from the Town's Land Development Code (LDC) Section 34-1174(b) which prohibits location of an accessory structure, closer to street right-of-way line than the principal building in RM zoning district.

The RM zoning district requires a street setback of 25 feet. The existing multi-family building is situated at a street setback of approximately 250 feet. The Applicant is proposing an elevated generator in the front yard at a street setback of 59 feet and a 24-foot side setback.

Analysis:

The lot is a 502 feet deep triangular property with nearly 300 feet width along Estero narrowing to 30 feet width in the rear yard. The property currently supports a multi-family residential building. The Applicant wants to add an elevated emergency generator to the front yard along Estero Blvd and is requesting a variance from LDC 34-1174(b).

LDC 34-1174 (b) states that accessory structures, on a single or multi-family lot, shall not be located closer to a street right-of-way line or street easement than the principal building. Part (6) of 34-1174 does allow: *Swimming pools, tennis courts, shuffleboard courts, and other similar recreation facilities that are accessory to a multiple-family development, or a hotel/motel, provided that they are part of a planned development or a site plan approved in accordance with ch. 10 of this LDC and provided they comply with the minimum setbacks for streets*; However this proposed structure is not recreational.

Before Ian, all mechanical equipment including the generator, electric room, domestic pump and fire alarm were located below the building. Post Ian, all have been elevated/relocated within the building except the generator. The Applicant has the choice to construct the elevated generator in the side or rear yard of the property, which will be consistent with the requirements of Town's LDC.

Staff notes that the proposed location of the generator is landward of the 1991 CCCL. Construction seaward of the '91 CCCL would make the permit subject to an FDEP permit and would require that the structure be built to the FDEP height of 21.3 feet. Landward of the '91 CCCL the FEMA flood zone (VE12) controls the height and would require the structure to be built at 13 feet of elevation. By moving the structure landward of the '91 CCCL, the structure can be built 8 feet lower than if it were seaward of the '91 CCCL.

The Applicant is proposing the elevated generator at a street setback of 59 feet and a side setback of 24 feet. The Applicant can construct the elevated generator closer to street right-of-way line than the principal building in RM zoning district only upon approval of this variance.

Neighborhood Compatibility:

Most properties along Estero comply with LDC 34-1174. In the past years, LPA has approved several variances to the code to allow accessory structures in the front yard, mostly for properties with no substantial rear yard or the principal structure next to coastal construction control line.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. *That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request **is**/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

There are exceptional conditions inherent to the property. The '91 CCCL runs just seaward of the parking lot. While there is adequate space for the generator

structure to be built on other parts of the property, the structure would be required to be 8 feet taller if constructed seaward of the '91 CCCL.

- b. *That the conditions justifying the variance are/**are not** the result of actions of the applicant taken after the adoption of the regulation in question.*

The conditions justifying the variance are not the result of the actions of the Applicant. The location of the CCCL and the required FDEP flood elevation make construction of the structure landward of the '91 CCCL 8 feet lower if constructed in the parking lot. While there is room further back on the property, moving the generator landward of the CCCL will make the structure safer, further from the water and potential storm surge, and will allow it to be built 8 feet lower.

- c. *That the variance granted **is**/is not the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

The '91 CCCL runs along the rear of the parking lot and that is the location where the generator is proposed. The Applicant has the option to construct the proposed elevated generator to the rear or side yard of the building, however it will be subject the FDEP elevations if it is constructed further away from the right of way.

- d. *That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

The conditions or circumstances on this specific property for which a variance is sought are not general in nature and do not warrant a code change.

III. RECOMMENDATION

Staff has reviewed the request for a variance from LDC 34-1174(b) which prohibits location of accessory uses including elevated generators closer to street right-of-way line than the principal building in RM zoning district and found that the variance request does meet the requirements set-forth in sec. 34-87.

At the December 19th LPA hearing the LPA recommended approval of the request with a 7-0 vote in favor.

Therefore, staff recommends **APPROVAL** of VAR20230212, to permit construction of an elevated generator in the front yard of the multi-family residence along Estero Blvd.

IV. CONDITIONS

If approval of the request is granted, the following conditions should be considered for incorporation into the resolution of approval.

1. The applicant shall provide screening or decorative features, of some kind, to limit the visual impact of the structure from Estero Blvd and from the neighboring property.
2. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

V. EXHIBITS

Exhibit A: Site Plan

Exhibit B: Landscape Plan

Exhibit C: Survey

Exhibit D: Complete Application Packet

Exhibit E: Postcards to Adjacent Property Owners

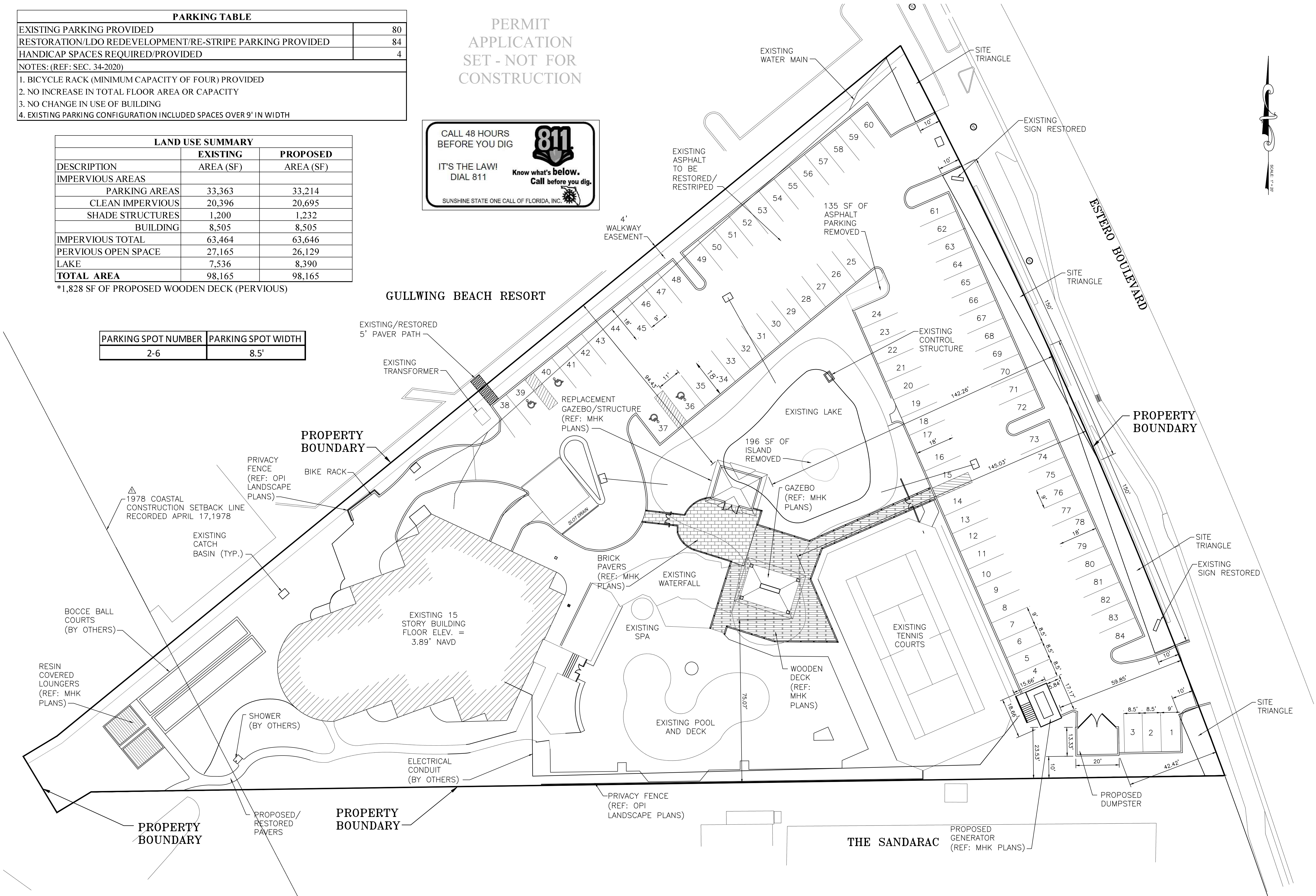
PARKING TABLE	
EXISTING PARKING PROVIDED	80
RESTORATION/LDO REDEVELOPMENT/RE-STRIPE PARKING PROVIDED	84
HANDICAP SPACES REQUIRED/PROVIDED	4
NOTES: (REF: SEC. 34-2020)	
1. BICYCLE RACK (MINIMUM CAPACITY OF FOUR) PROVIDED	
2. NO INCREASE IN TOTAL FLOOR AREA OR CAPACITY	
3. NO CHANGE IN USE OF BUILDING	
4. EXISTING PARKING CONFIGURATION INCLUDED SPACES OVER 9' IN WIDTH	

LAND USE SUMMARY		
DESCRIPTION	EXISTING AREA (SF)	PROPOSED AREA (SF)
IMPERVIOUS AREAS		
PARKING AREAS	33,363	33,214
CLEAN IMPERVIOUS	20,396	20,695
SHADE STRUCTURES	1,200	1,232
BUILDING	8,505	8,505
IMPERVIOUS TOTAL	63,464	63,646
PERVIOUS OPEN SPACE	27,165	26,129
LAKE	7,536	8,390
TOTAL AREA	98,165	98,165

*1,828 SF OF PROPOSED WOODEN DECK (PERVIOUS)

PARKING SPOT NUMBER	PARKING SPOT WIDTH
2-6	8.5'

PERMIT
APPLICATION
SET - NOT FOR
CONSTRUCTION



CLIENT NAME:
**POINTE ESTERO CONDOMINIUM
ASSOCIATION, INC.**

PROJECT NAME:
**POINTE ESTERO LIMITED REVIEW
DEVELOPMENT ORDER**

DRAWING TITLE:
**SITE PLAN
6640 ESTERO BOULEVARD**

DESIGNED BY: M.W.D.

DRAWN BY: P.W.B.

CHECKED BY: M.W.D.

REVIEWED BY: M.W.D.

HORIZ. SCALE (24X36): 1" = 20'

HORIZ. SCALE (11X17): 1" = 40'

DATE:
10/24/2023

REVISION:
1. REVISION TO INCLUDE THE 1978 COOL LINE

ENGINEER'S SEAL STAMPS

SHEET 3

OF 3

11/27/2023\\K:\shared\p\023-00-012 Point Estero LDO\02_SP\REV01\02300012_C03_SitePlan.dwgjwbetty

Designs for Human Habitation and Environmental Conservation

2770 Horseshoe Drive South, Suite 7, Naples, Florida 34104

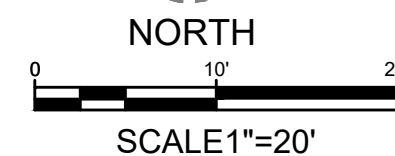
Matthew W. DeFrancesco, P.E. FL# 86640

Robau and Associates, LLC Florida Certificate of Authorization No:30087

Page 251 of 373

[illegible]

DATE: 09-28-23	DESIGNED BY: OPI
DATE: 09-28-23	DRAWN BY: OPI



JOB NUMBER: 024-23

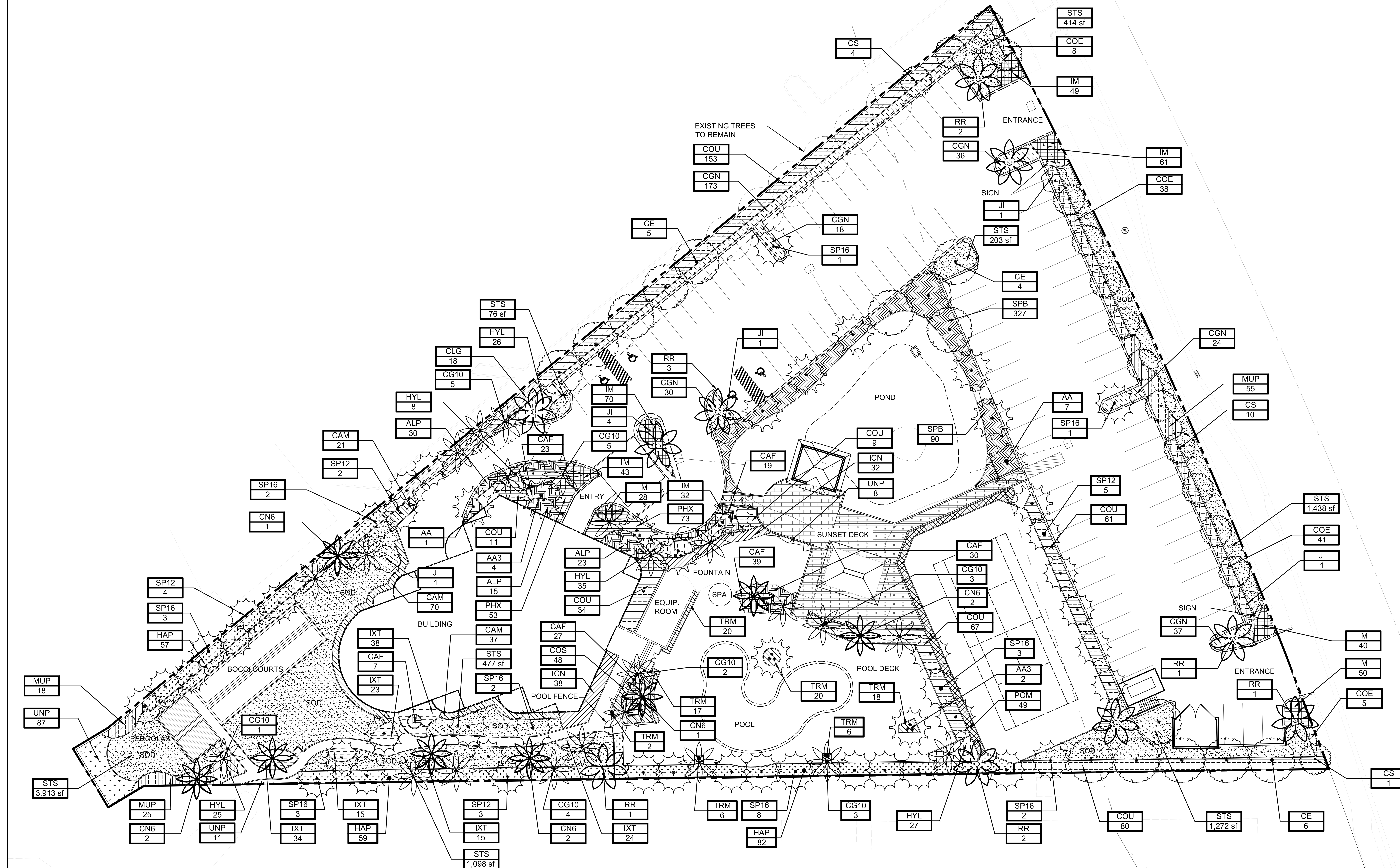
SHEET TITLE:

LANDSCAPE PLAN

SHEET NUMBER

LP101

NOTICE: ALL DRAWING DISCREPANCIES MUST BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT AND A APPROVED SHOP DRAWINGS MUST BE OBTAINED PRIOR TO ORDERING MATERIALS OR BEGINNING CONSTRUCTION.



PLANT LIST

PLANT SCHEDULE											
TREES	CODE	QTY	BOTANICAL NAME	COMMON NAME	SIZE	CALIPER	NATIVE	USDA ZONE	CONTAINER	REMARKS	
	CE	15	Conocarpus erectus	Buttonwood	14' HT x 6' SPR	3.5"	Y		45 Gallon	FLORIDA FANCY, SINGLE STRAIGHT TRUNK, FULL.	
	CS	15	Conocarpus erectus f. sericeus	Silver Buttonwood	12' HT. X 5' SPR.	1.75"	Y		25 GALLON	FLORIDA FANCY, STANDARD, FULL.	
	J1	8	Jatropha integririma 'Compacta'	Compact Spicy Jatropha	4'-6" Wood		N		25 GALLON	FLORIDA FANCY, MUTI-TRUNK, FULL.	
PALM TREES	CODE	QTY	BOTANICAL NAME	COMMON NAME	SIZE	CALIPER	NATIVE	USDA ZONE	CONTAINER	REMARKS	
	AA3	6	Archontophoenix alexandrae	Alexandra Palm	14' CT		N		FIELD GROWN	FLORIDA FANCY, TRIPLE, FULL.	
	AA	8	Archontophoenix alexandrae	Alexandra Palm	16' CT		N		FIELD GROWN	FLORIDA FANCY, SINGLE STRAIGHT TRUNK, FULL.	
	CG10	23	Cocos nucifera 'Green Malaysian'	Coconut Palm	10' GW.		N		FIELD GROWN	JAMAICAN CERTIFIED, CURVES, FULL.	
	CN6	8	Cocos nucifera 'Green Malaysian'	Coconut Palm	6' GW.		N		FIELD GROWN	JAMAICAN CERTIFIED, CURVES, FULL.	
	RR	10	Roystonea regia	Royal Palm	16' GW.		Y		FIELD GROWN	FLORIDA FANCY, SINGLE STRAIGHT TRUNK, FULL, MATCHING PALMS.	
	SP12	14	Sabal palmetto	Cabbage Palmetto	12' CT		Y		FIELD GROWN	FLORIDA FANCY, CIGAR CUT, SMOOTH TRUNKS, FULL.	
	SP16	25	Sabal palmetto	Cabbage Palmetto	16' CT		Y		FIELD GROWN	FLORIDA FANCY, CIGAR CUT, SMOOTH TRUNKS, FULL.	
SHRUB AREAS	CODE	QTY	BOTANICAL NAME	COMMON NAME	SIZE	NATIVE	USDA ZONE	CONTAINER	SPACING		
	ALP	68	Alpinia purpurata	Red Ginger	30" HT. X 30" SPR.	No		7 GALLON	30" o.c.	FLORIDA FANCY, FULL.	
	CAF	145	Canna flaccida	Yellow Canna	15" HT. X 15" SPR.	No		3 GALLON	24" o.c.	FULL.	
	CAM	128	Carissa macrocarpa 'Emerald Blanket'	Emerald Blanket Natal Plum	18" HT. X 24" SPR.	No		3 GALLON	24" o.c.	FULL.	
	CLG	18	Clusia guttifera	Small Leaf Clusia	72" HT. X 36" SPR.	No		15 GALLON	60" o.c.	FLORIDA FANCY, FULL.	
	CGN	318	Clusia guttifera nana	Dwaft Clusia	15" HT. X 15" SPR.	No		3 GALLON	24" o.c.	FULL.	
	COU	415	Coccoloba uvifera	Sea Grape	48" HT. X 36"SPR.	Yes		15 GALLON	36" o.c.	FLORIDA FANCY, FULL.	
	COE	92	Conocarpus erectus	Green Buttonwood	36" HT. X 36" SPR.	Yes		7 GALLON	36" o.c.	FLORIDA FANCY, FULL.	
	COS	48	Conocarpus erectus f. sericeus	Silver Buttonwood	18" HT. X 24" SPR.	Yes		3 GALLON	24" o.c.	FULL.	
	HAP	198	Hamelia patens	Firebush	48" HT. X 36"SPR.	Yes		7 GALLON	42" o.c.	FLORIDA FANCY, FULL.	
	HYL	121	Hymenocallis latifolia	Spider Lily	24" HT. X 24" SPR.	Yes		3 GALLON	30" o.c.	FULL.	
	ICN	70	Ixora coccinea 'Nora Grant'	Nora Grant Pink Ixora	24" HT. X 24" SPR.	No		3 GALLON	30" o.c.	FULL.	
	IXT	149	Ixora taiwanensis 'Red Dwarf'	Red Dwarf Ixora	18"HT. X 18" SPR.	No		3 GALLON	24" o.c.	FULL.	
	MUP	98	Muhlenbergia x 'Pink Muhly'	Pink Flamingo Muhly	24" HT. X 24" SPR.	Yes		3 GALLON	30" o.c.	FULL.	
	PHX	126	Philodendron xanadu	Xanadu Philodendron	24" HT. X 24" SPR.	No		3 GALLON	24" o.c.	FULL.	
	POM	49	Podocarpus macrophyllus 'Maki'	Maki Yew Podocarpus	60" HT. X 30" SPR.	No		15 GALLON	36" o.c.	FLORIDA FANCY, FULL.	
	SPB	417	Spartina bakeri	Sand Cordgrass	18"HT. X 18" SPR.	Yes		3 GALLON	24" o.c.	FULL.	
	UNP	106	Uniola paniculata	Sea Oats	18"HT. X 18" SPR.			3 GALLON	24" o.c.	FULL.	
GROUND COVERS	CODE	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	NATIVE	GROW ZONE	CONTAINER	SPACING	REMARKS
	IM	373	Impatiens walleriana 'Accent Lavender Blue'	Accent Lavender Blue Impatiens	1 GALLON	18" O.C.	N		1 GALLON	18" o.c.	SEASONAL COLOR, WINTER - IMPATIENS OR SIMILAR, SUMME - GERANIUMS OR SIMILAR
	STS	8,891 sf	Stenotaphrum secundatum 'Floratum'	Floratum St. Augustine Grass	ROLL		Y				WEED FREE, TIGHT JOINTS, ALTERNATE JOINTS.
	TRM	89	Trachelospermum asiaticum 'Minima'	Minima Asiatic Jasmine	6" HT. X 6" SPR.	18" O.C.	N		1 GALLON	18" o.c.	FULL.
2,400 CY		BROWN COCO MULCH		ORGANIC MULCH, 3" THICK							



**SUNSTREAM
HOTEL &
RESORTS**

6640 ESTERO BLVD.
FORT MYERS BEACH, FL.
33931


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INTERNATIONAL
THE ART & SCIENCE OF OUTDOOR LIVING

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NAPLES, FLORIDA 34110
239-260-1324
www.opidesign.net

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CONSTRUCTION**

W. PATRICK TREFF, ASLA
LANDSCAPE ARCHITECT #1481

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CONSULTANTS:

ARCHITECT
COMPANY NAME
ADDRESS
CITY, STATE ZIP

ENGINEER
ROBAID & ASSOCIATES
2770 Horseshoe Drive S, Suite 7
Naples, Florida, Florida 34104

SURVEYOR
COMPANY NAME
ADDRESS
CITY, STATE ZIP

SUBJECT PROPERTY

ROAD NAME

Downtown Area

City Center

Industrial Zone

Residential Area

North Arrow

[illegible]

DATE: 09-28-23	DESIGNED BY: OPI
DATE: 09-28-23	DRAWN BY: OPI



NORTH

JOB NUMBER: 024-23
SHEET TITLE: LANDSCAPE SCHEDULE
SHEET NUMBER: LP102

NOTICE: ALL DRAWING DISCREPANCIES MUST BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT, AND LA APPROVED SHOP DRAWINGS MUST BE OBTAINED PRIOR TO ORDERING MATERIALS OR BEGINNING CONSTRUCTION.

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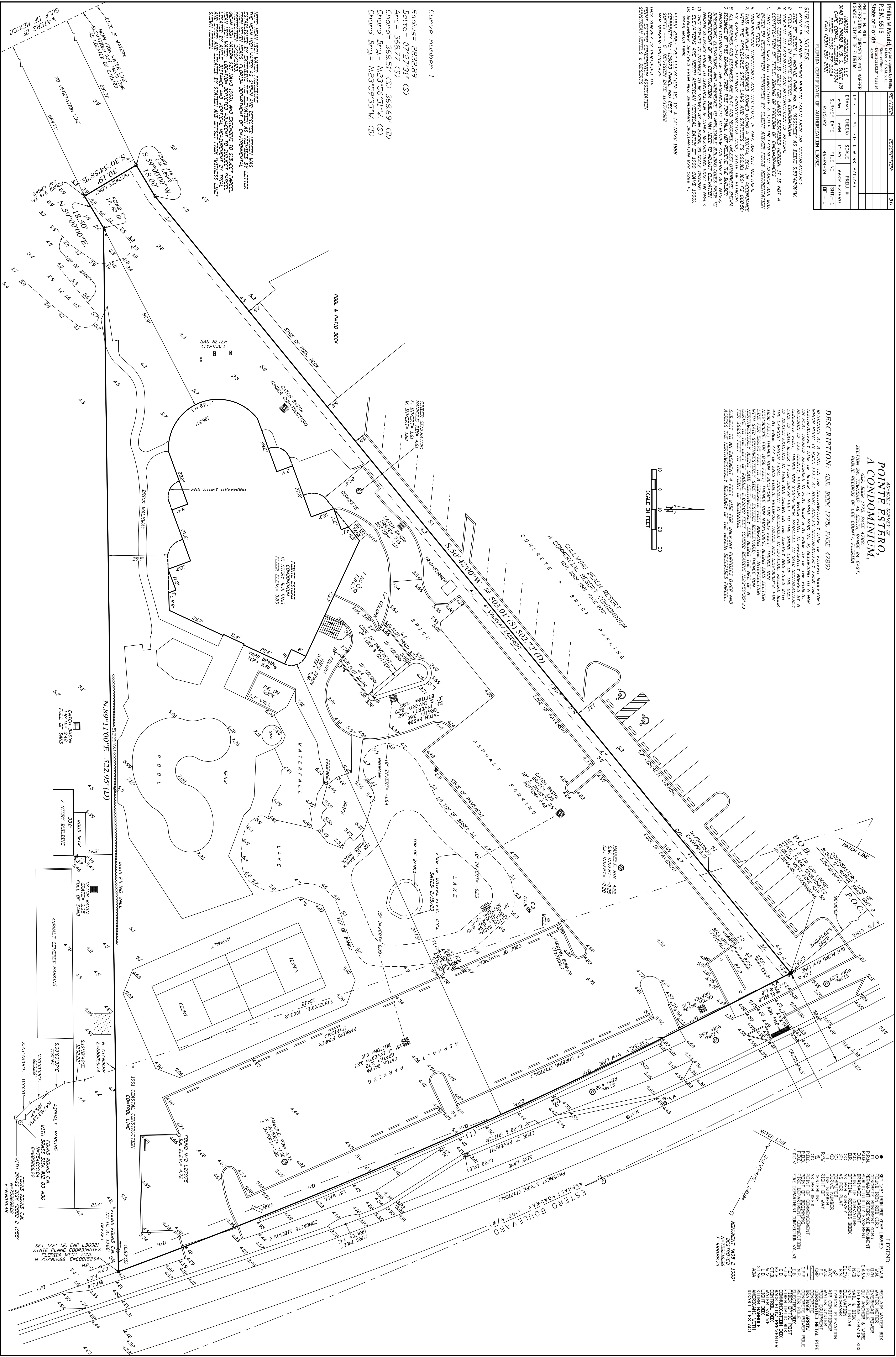
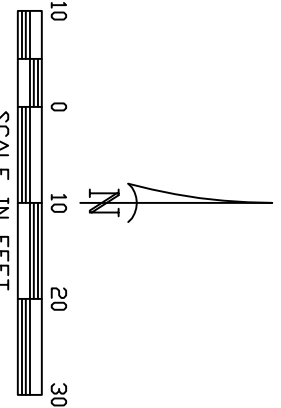
DESCRIPTION: (Q.R. BOOK 1775, PAGE 4789)
BEGINNING AT A POINT ON THE SOUTHWESTERLY SIDE OF EASTER
WHICH POINT IS 2,055 FEET AT RIGHT ANGLES SOUTHEASTERLY
SOUTHWESTERLY SIDE OF BLOCK 1, MCPHIE PARK No. 2, ACCORDING
TO PLAT, TULSA COUNTY RECORDS, PLAT PAGE 50, 1902.

"AS BUILT" FOR VET OF
 SECTION 34, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
 PUBLIC RECORDS OF LEE COUNTY, FLORIDA
 (CDR. BOOK 1775, PAGE 4789)
 A CONDOMINIUM,
 POINTE ESTERO,

SUBJECT TO AN EASEMENT 4 FEET WIDE FOR WALKWAY PURPOSES OVER AND ACROSS THE NORTHWESTERLY BOUNDARY OF THE HEREIN DESCRIBED PARCEL.

1. BASIS OF BEARING SHALL BE TAKEN FROM THE SURFACE OF THE GROUND AS BEING 5.50 ± 0.00 m.
2. FIELD NOTES IN ROUTE ENTERED A COMPOUND.
3. SUBJECT TO EXISTENCES AND RESTRICTIONS OF RECORD.
4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREIN, IT IS NOT A GUARANTEE OF THE ACCURACY OF THE FIELD OR EXISTING RECORDS AND BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND DOCUMENTATION IN THE FIELD.
5. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED IN THE SURVEY OR COMPROMISED BY THE SURVEY.
6. THE APPLICABLE STATE LAWS AND STATUTES FS 66608-006, FS 66608 FS 742065, FS 51-1766, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA, ALL RECORDS AND DISTANCES ARE PLAT AND REQUIRED, UNLESS OTHERWISE NOTED.
7. ALL CONTRACTORS OF THE RESPONSIBILITY TO EXCISE AND CARRY ALL ITEMS, DIMENSIONS, ELEVATIONS, AND ADHERENCE TO APPLICABLE BUILDING CODES PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION. BUILDER MAY NEED TO ADJUST ELEVATION OF WORK TO BE CONSTRUCTED TO MEET THE DESIGN OF THE CLIENT.
8. ALL WORK IS INTENDED TO BE DONE IN ACCORDANCE WITH THE DESIGN OF THE CLIENT.
9. ALL ELEVATIONS ARE IN NORTH AMERICAN VERTICAL DATUM OF 1988 (UNDO 1988), 22664600 DERIVED FROM NOS BENCHMARK, IDENTIFICATION 972 5366, F.
10. BENCH MARK DERIVED FROM NOS BENCHMARK, IDENTIFICATION 972 5366, F.

THIS SURVEY IS CERTIFIED TO:
POINT ESTERO CONDOMINIUM ASSOCIATION
SUNSTREAM HOTELS & RESORTS





COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 6642 Estero Blvd
STRAP Number: 34-46-24-W4-02500.00CE
Applicant: Pointe Estero Condominium Association, Inc Phone: _____
Contact Name: Curt Brenner Phone: 239-765-4111
Email: curt.brenner@sunstream.com Fax: _____
Current Zoning District: RM
Future Land Use Map (FLUM) Category: Mixed Residential
FLUM Density Range: 6du/acre Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

- ☐ Special Exception
☒ Variance
☐ Conventional Rezoning
☐ Planned Development ☐ Commercial ☐ Residential
☐ Master Concept Plan Extension
☐ Appeal of Administrative Action
☐ Vacation of Platted Right-of-way and Easement
☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A
PH-B
PH-C
PH-D
PH-E
PH-F
PH-G
attach on separate sheet

PART I – General Information

A. Applicant*: Curt Brenner Phone: 239-765-4111
**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*
Applicant Mailing Address: 6640 Estero Blvd
Email: curt.brenner@sunstream.com Fax: _____
Contact Name: Curt Brenner Phone: 239-765-4111



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|--|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☒ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Curt Brenner Phone: 239-765-4111
Address: 6620 Estero Blvd
Email: curt.brenner@sunstream.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Kara Stewart Phone: 239-770-4198
Address: 6640 Estero Blvd
Email: stewart.karalyn@gmail.com Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34 - 1174 (b)
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Donald Fluegel swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Donald J. Fluegel Donald Fluegel
Signature Printed Name
President
Pt. Estero Condominium Ass'n.

STATE OF Minnesota COUNTY OF Dakota

The foregoing instrument was certified and subscribed before me by means of his physical
TH
presence OR _____ online notarization, this 12 day of October, 2023, by
_____, ☒ who is personally known to me OR ☐ who has produced Donald

J. Fluegel as identification.

(SEAL)

Stephanie K. Rogness
Notary Public Signature

PART V

Property Ownership (Multiple Owners)



☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☒ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☒ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Signature

Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, _____ (name), as _____ (title)
of _____ (company), swear or affirm under oath, that I am the
owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 34-46-24-W4-02500.00CE

Property Address: 6642 Estero Blvd

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: ^{1775/1854} _____ Page: ^{4765/0395} _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT
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C. Property Dimensions:

Width (please provide an average width if irregular in shape) 195 feet
Depth (please provide an average width if irregular in shape) 532 feet
Frontage on street: 363 feet. Frontage on waterbody: 30 feet
Total land area: 98595 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Head south on Estero Blvd, property located on right side

☐ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☐ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- line. Exhibit 6-2
- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
 - D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
 - E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
 - F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
 - G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
 - H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
 - I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: Pointe Estero Generator
Authorized Applicant: Curt Brenner
LeePA STRAP Number: 34-46-24-W4-02500.00CE

Current Property Status: Unoccupied	
Current Zoning: RM	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density: 6 du/acre	Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
34-1174 (b)	Location and Setbacks generally

Complete the narrative statements below for EACH variance requested.

PART I Narrative Statements

Request for variance from 34-1174 (b) (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
Setbacks from streets, no accessory, use, building or structure shall be located closer to a street right of way line or street easement than the principle structure.
Applicant is proposing an elevated emergency generator be located forward of the principle structure but setback from front property line approx 59' and from the side yard approx 24'.

Reasons for request

Explain why the variance is needed:
The land development code does not allow accessory structures be located forward of the principle structure. The property owners are looking to re locate and elevate the emergency generator structure approx 59' from ROW.
The existing condominium is pre-firm and since Hurricane Ian the owners are trying to elevate all their essential service equipment above flood and as far from the Gulf of Mexico as possible. The generator, electric room, domestic pump and fire alarm were previously located below the building. All have been elevated/relocated within the building except the generator.
The generator is used to maintain service to the essential services of the building during a power outage; fire pump, elevator, fire alarm, etc. The desire to relocate to a location with the least impact on the residents and neighbors has been taken into consideration.

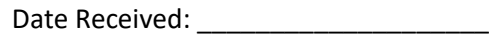
Explain the possible effect the variance, if granted, would have on surrounding properties:

Positioning the generator at it's proposed location should not have any effect on surrounding properties as it is approx 59' from Estero Blvd and 24' to the side yard.

The code requires a 20' setback for this zoning district. Placing the generator in the proposed location places the generator adjacent to a parking lot and not habitable space.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

When the property was developed the building was located towards the Gulf leaving the majority of land between the building and street right away for amenities and parking. Locating the elevated generator either on the side of the building or behind it would greatly impact surrounding properties and the owners within the Condo. The owners are looking to relocate the generator in a manner it does not have any impact on neighbors while providing for a more stable environment (further away from the Gulf waters and elevated). The property pie shape, and the configuration of existing structures and amenities, along with the location of 1991 and 1978 CCCL line on the property makes this location most suitable. The principle structure is approx 250' from the ROW, allowing us the space between the ROW and principle structure which to install this elevated generator.



Please see addendum 34-87

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

"Variance is requested from..." Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

September 6, 2023

Sent via email only to: Brian Schomacker, General Manager, brians@sunstream.com;
Curt Brenner, Operations Director, curt.brenner@sunstream.com; and Monica Flowers, Executive Director,
monicaf@sunstream.com

Pointe Estero Condominium Association, Inc.
Board of Directors
C/o SunStream Hotels and Resorts
6640 Estero Blvd.
Fort Myers Beach, FL 33931

Re: Pointe Estero Condominium Association, Inc.
Application for Public Hearing | LDC Section 34-201(a)(1)b.3 | Exhibit 5-4
Our File No.: 62218.001

To whom it may concern:

This office represents Pointe Estero Condominium Association, Inc. ("Pointe Estero") in the above referenced matter concerning Pointe Estero's Application for Public Hearing. Please allow this correspondence to serve as a letter of opinion pursuant to Section 34-201(a)(1)b.3 of the Lee County Land Development Code ("LDC") and as Exhibit 5-4 to Pointe Estero's Application for Public Hearing.

As part of the Application for Public Hearing, LDC Section 34-201(a)(1)b.3 requires a letter of opinion from a licensed Florida attorney and states in full as follows:

So as to protect the legal rights of nonparticipating unit owners, the application must be accompanied by a letter of opinion from a licensed Florida attorney, who must attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents or timeshare documents, as applicable, and concluded that the act of applying or petitioning to the County violates none of the provisions therein, or any federal or state law regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the County would violate no such rights.

I am aware of no applicable federal law regulating condominiums which affects Pointe Estero's Application for Public Hearing. With respect to applicable state law regulating condominiums, Section 718.113(2)(a), Florida Statutes, found in the Condominium Act, provides in relevant part as follows (emphasis added):

Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided therein.

The Amended and Restated Declaration of Condominium of Pointe Estero Condominium ("Declaration"), recorded in Official Records Book 4590, Pages 0211, *et seq.*, in the Official Records of Lee County, Florida, regulates material alterations and substantial additions to the common elements by both the unit owners and the association. More specifically, Section 9.6 of the Declaration governs alterations and additions by the association and provides that any

work which is reasonably necessary to protect the common elements and which also constitutes a material alteration need not be submitted to the unit owners for approval. Section 9.6 of the Declaration provides in full as follows (emphasis added):

The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or real property owned by the Association costing more than \$20,000 in the aggregate in any calendar year without prior approval of at least a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.

Assuming the proposed alteration is a “material alteration” of the common elements, Pointe Estero’s Application for Public Hearing concerns an alteration that would cost more than \$20,000, typically requiring membership approval. However, the proposal contained in the Application serves to protect and maintain a common element generator that is being replaced after Hurricane Ian and elevated to protect from future floods. The Declaration does not require prior unit owner approval to alter the common elements when such an alteration is *reasonably necessary* for the protection of the same. That said, in the process of procuring consent of the membership to the Application, the Association has also sought the approval of the membership to the material alteration pursuant to Section 9.6 of the Declaration, thus complying with any conceivable conditions precedent.

Having examined the governing documents of Pointe Estero and the Condominium Act, as well as the content of the authorization forms distributed to the unit owners, please allow this letter to serve as my attestation that the act of applying or petitioning to the County violates none of the provisions therein, nor the rights of any nonparticipating unit owners. As derived from such documents and applicable laws, the approval of the requested act by the County would violate no such rights.

Very truly yours,

Vanessa Fernandez

Vanessa Fernandez, Esq.

VF/slo

This instrument prepared by:
Christopher J. Shields, Esq.
PAVESE LAW FIRM
1833 Hendry Street
Fort Myers, Florida 33901
(239) 334-2195

CERTIFICATE OF AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OF
POINTE ESTERO CONDOMINIUM

The Undersigned, being duly elected and acting President and Secretary of **POINTE ESTERO CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not-for-profit, do hereby certify that the amendment set forth below was approved, as evidenced by a written statement or ballot manifesting the intention that such amendment be adopted. The amendment was approved and adopted by the votes indicated for the purposes of amending the Amended and Restated Declaration of Condominium of Pointe Estero Condominium recorded in Official Records Book 4590, Page 211, *et seq.*, in the Public Records of Lee County, Florida, as may have been subsequently amended. The original Declaration of Condominium of Pointe Estero Condominium was recorded in Official Records Book 1775, Page 4765, *et seq.*, in the Public Records of Lee County, Florida.

The following amendment was approved by the affirmative vote of not less than two-thirds (2/3rds) of the voting interests present, in person or by proxy, voting at a duly noticed Membership Meeting of the Association:

Resolved: That the Amended and Restated Declaration of Condominium of Pointe Estero Condominium be, and hereby is, amended, and that the amendments to the aforementioned document are adopted in the form attached hereto as Exhibit "A" and made a part hereof; and

Further Resolved: That the Officers and Directors are hereby instructed and authorized to cause the aforementioned document to be filed in the public record, together with a Certificate of Amendment.

Dated this ^{7th} 30 day of April, 2021

WITNESSES (2):

Sign: William P. Kelly
Print: WILLIAM P. KELLY

Sign: Stephanie K. Rogness
Print: STEPHANIE K. ROGNESS

POINTE ESTERO CONDOMINIUM ASSOCIATION, INC.

Sign: Donald J. Fluegel
Print: Donald J. Fluegel
Title: President

WITNESSES (2):

Sign: Will P. Kelly
Print: William P. KellySign: Stephanie K. Rogness
Print: STEPHANIE K. ROGNESS

ATTEST:

Sign: Gene Riches
Print: Gene Riches
Title: SecretarySTATE OF ~~FLORIDA~~ MINNESOTA
COUNTY OF ~~LEE~~ DAKOTA

The foregoing instrument was acknowledged before me by means of (check one) ☒ physical presence or ☐ online notarization this 30th day of April, 2021, by Donald J. Fluegel, as President of POINTE ESTERO CONDOMINIUM ASSOCIATION, INC., a Florida corporation, on behalf of the corporation, who (check one) ☒ is personally known to me, or ☐ produced the following identification:

(Notary Seal/Stamp)



Notary Public - State of Florida

Sign: Ruth E. Lehmann
Print: Ruth E. Lehmann
My Commission Expires: 1/31/2025STATE OF ~~FLORIDA~~ MINNESOTA
COUNTY OF ~~LEE~~ DAKOTA

The foregoing instrument was acknowledged before me by means of (check one) ☒ physical presence or ☐ online notarization this 30th day of April, 2021, by Gene Riches, as Secretary of POINTE ESTERO CONDOMINIUM ASSOCIATION, INC., a Florida corporation, on behalf of the corporation, who (check one) ☒ is personally known to me, or ☐ produced the following identification:

(Notary Seal/Stamp)



Notary Public - State of Florida

Sign: Ruth E. Lehmann
Print: Ruth E. Lehmann
My Commission Expires: 1/31/2025

Exhibit "A"

**AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OF
POINTE ESTERO CONDOMINIUM**

The Amended and Restated Declaration of Condominium of Pointe Estero Condominium recorded in Official Records Book 4590, Page 211, *et seq.*, in the Public Records of Lee County, Florida, and as may have been subsequently amended, shall be amended as follows (otherwise, all provisions shall remain the same):

Note: Language to be added is underlined and language to be deleted is ~~struck through~~.

* * * * *

ARTICLE 6 – LIMITED COMMON ELEMENTS

Article 6, Section 6.1, subsection (B) shall be amended as follows; all other Sections and subsections shall remain unchanged.

6.1 **Description of Limited Common Elements.** Certain common elements have been or may be designated as limited common elements, reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their use has been assigned are as described in this Declaration and as further identified on the original survey and plot plan.

(A) **Parking Spaces.** There may be designated on the attached survey and plot plan certain parking spaces as limited common elements. Parking spaces may have been initially assigned to the exclusive use of specific units by the Developer. Each unit shall always have the exclusive use of one assigned space, if parking spaces were assigned. The cost of maintenance of all parking spaces shall be a common expense. The Developer reserved the right to provide covered parking spaces for purchasers who are willing to pay for covered spaces. The expense of maintaining and repairing covered parking spaces is a common expense.

(B) **Air Conditioning and Heating Equipment.** All equipment, fixtures and installations located outside of a unit which furnish air conditioning or heating exclusively to that unit shall be limited common elements, and shall be maintained, repaired and replaced ~~solely at the expense of the owner of the unit~~ by the Association as a common expense in the sole discretion of the Board of Directors.

(C) **Porches and Balconies.** Any porch or balcony attached to and serving exclusively each unit shall be a limited common element. The unit owner shall be responsible for day-to-day cleaning and care, but all painting and maintenance shall be the responsibility of the Association and shall be a common expense. No porch or balcony may be carpeted, covered or enclosed in any way without the approval of the Association. The maintenance, repair or replacement and insurance on such approved carpeting shall be the responsibility of the unit owner.

(D) **Storage Lockers.** The storage areas shown on the survey and plot plan are limited common elements. The storage areas shall be divided into "locker spaces". Each locker was assigned for the exclusive use of a certain unit. Every unit will have access to a storage locker. The cost of maintenance of all storage lockers shall be assessed as a common expense to all units. The initial

assignment of storage lockers was the exclusive right of the developer, subject to re-assignment by the Board of Directors.

(E) **Others.** Any portion of the common elements connected to or exclusively serving a single unit, which is specifically required in this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not. This paragraph includes but is not limited to windows, screens and doors, including all hardware and framing therefor.

ARTICLE 9 – MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS

Article 9, Sections 9.1, subsection (I) and 9.2, subsection (G) shall be amended as follows; all other Sections and subsections shall remain unchanged.

9. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS. Responsibility for the protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvement shall be as follows:

9.1 **Association Maintenance.** The Association is responsible for the protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Water lines, up to the individual unit cut-off valve. Notwithstanding however, if and when the water serving a unit is separately metered, then the Association's responsibility shall end at the meter.
- (C) Cable television lines up to the exterior wall outlet.
- (D) Sewer lines, up to the point where they enter the individual unit.
- (E) All exterior building walls, including painting, waterproofing, and caulking.
- (F) The exterior surfaces of the main entrance door to each unit.
- (G) Dryer and bath fan vents up to the point where they enter the unit.
- (H) Notwithstanding any language to the contrary set forth in this section 9.1 or 9.2, the Association, by and through its Board, is authorized and empowered to replace all windows, window glass, sliding glass doors and any related hardware and fixtures if the Board in its sole discretion determines that the replacement of these components is necessary, prudent, or require by law or ordinance. Any expenses related to this function shall be considered a common expense.
- (I) All equipment, fixtures and installations which furnish air conditioning or heating to the common elements or common areas, and any air conditioning and heating equipment located

outside of a unit, including the air conditioning compressors, coolant lines, thermostats, ducts, condensation drain lines and related installations.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense unless the need for the work was caused by the unit owner. Regardless of the foregoing, the Association shall not be responsible for incidental damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title.

9.2 Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and of certain limited common elements. The owner's responsibilities include, without limitation:

- (A) All screens, windows, window glass, and related hardware and frames.
- (B) The interior surface of the entrance door to the unit and its interior surface.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit and serving only the unit.
- (E) The circuit breaker panel and all electrical wiring going into the unit from the panel.
- (F) Appliances, built-in cabinets, water heaters, smoke alarms and vent fans.
- (G) All air conditioning and heating equipment located inside of the unit, including the air conditioning compressors, coolant lines, thermostats, ducts, condensation drain lines and related installations located within the unit and serving the unit exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the unit.
- (L) Other facilities or fixtures which are located or contained entirely or partially within the unit and serve only the unit.
- (M) All interior partition walls which do not form part of the boundary of the unit.

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This instrument prepared by:
Christopher J. Shields, Esq.
PAVESE LAW FIRM
1833 Hendry Street
Fort Myers, Florida 33901
(239) 334-2195

CERTIFICATE OF AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OF
POINTE ESTERO CONDOMINIUM

The Undersigned, being duly elected and acting President and Secretary of **POINTE ESTERO CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not-for-profit, do hereby certify that the amendment set forth below was approved, as evidenced by a written statement or ballot manifesting the intention that such amendment be adopted. The amendment was approved and adopted by the votes indicated for the purposes of amending the Amended and Restated Declaration of Condominium of Pointe Estero Condominium recorded in Official Records Book 4590, Page 211, *et seq.*, in the Public Records of Lee County, Florida, as may have been subsequently amended. The original Declaration of Condominium of Pointe Estero Condominium was recorded in Official Records Book 1775, Page 4765, *et seq.*, in the Public Records of Lee County, Florida.

The following amendment was approved by the affirmative vote of not less than two-thirds (2/3rds) of the voting interests present, in person or by proxy, voting at a duly noticed Membership Meeting of the Association:

Resolved: That the Amended and Restated Declaration of Condominium of Pointe Estero Condominium be, and hereby is, amended, and that the amendments to the aforementioned document are adopted in the form attached hereto as Exhibit "A" and made a part hereof; and

Further Resolved: That the Officers and Directors are hereby instructed and authorized to cause the aforementioned document to be filed in the public record, together with a Certificate of Amendment.

Dated this ^{7th} 30 day of April, 2021

WITNESSES (2):

Sign: William P. Kelly
Print: WILLIAM P. KELLY

Sign: Stephanie K. Rogness
Print: STEPHANIE K. ROGNESS

POINTE ESTERO CONDOMINIUM ASSOCIATION, INC.

Sign: Donald J. Fluegel
Print: Donald J. Fluegel
Title: President

WITNESSES (2):

Sign: Will P. Kelly
 Print: William P. Kelly

Sign: Stephanie K. Rogness
 Print: STEPHANIE K. ROGNESS

ATTEST:

Sign: Gene Riches
 Print: Gene Riches
 Title: Secretary

STATE OF ~~FLORIDA~~ MINNESOTA
 COUNTY OF ~~LEE~~ DAKOTA

The foregoing instrument was acknowledged before me by means of (check one) ☒ physical presence or ☐ online notarization this 30th day of April, 2021, by Donald J. Fluegel, as President of POINTE ESTERO CONDOMINIUM ASSOCIATION, INC., a Florida corporation, on behalf of the corporation, who (check one) ☒ is personally known to me, or ☐ produced the following identification:

(Notary Seal/Stamp)



Notary Public - State of Florida

Sign: Ruth E. Lehmann
 Print: Ruth E. Lehmann
 My Commission Expires: 1/31/2025

STATE OF ~~FLORIDA~~ MINNESOTA
 COUNTY OF ~~LEE~~ DAKOTA

The foregoing instrument was acknowledged before me by means of (check one) ☒ physical presence or ☐ online notarization this 30th day of April, 2021, by Gene Riches, as Secretary of POINTE ESTERO CONDOMINIUM ASSOCIATION, INC., a Florida corporation, on behalf of the corporation, who (check one) ☒ is personally known to me, or ☐ produced the following identification:

(Notary Seal/Stamp)



Notary Public - State of Florida

Sign: Ruth E. Lehmann
 Print: Ruth E. Lehmann
 My Commission Expires: 1/31/2025

Exhibit "A"

AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OF
POINTE ESTERO CONDOMINIUM

The Amended and Restated Declaration of Condominium of Pointe Estero Condominium recorded in Official Records Book 4590, Page 211, *et seq.*, in the Public Records of Lee County, Florida, and as may have been subsequently amended, shall be amended as follows (otherwise, all provisions shall remain the same):

Note: Language to be added is underlined and language to be deleted is ~~struck through~~.

* * * * *

ARTICLE 6 – LIMITED COMMON ELEMENTS

Article 6, Section 6.1, subsection (B) shall be amended as follows; all other Sections and subsections shall remain unchanged.

6.1 **Description of Limited Common Elements.** Certain common elements have been or may be designated as limited common elements, reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their use has been assigned are as described in this Declaration and as further identified on the original survey and plot plan.

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ADDENDUM LDC 34-87

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision making in LDC Section 34-87

1. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question*

The current configuration of the existing building's location and recreation area makes it difficult to place the elevated generator stand elsewhere on the property. The location chosen will place the structure landward of the 1991 CCCL. The rear of the property is impacted by the 1978 CCCL, hence making it less desirable to locate it in this area. The area behind the principle structure is seaward of the 1991 CCCL with a VE14 elevation which would require DEP approval and further elevation (typically 3+ feet from BFE) placing it approximately 17' DFE, while placing the generator in our preferred location places it in a VE12 elevation and landward of the 1991 CCCL. Placing the generator at an approximate 17' height would place directly within the view of the residences, further hampering the view of the Gulf of Mexico. Additionally, the property is pie shaped and narrows in the rear behind the existing building, thus not allowing for further separation from the existing building and residences. Maintaining side yard setbacks of 20' and locating the generator parallel to the principle structure with the irregular pie shaped lot would place the generator adjacent to the neighboring properties dwelling units and or outdoor area, as well as within the recreational area of this property. The existing building is pre-firm and the previous generator was located beneath the building below flood. As a part of the renovation from Hurricane Ian, every effort is being made to elevate all essential equipment above flood. In an effort to relocate the generator to enable it to continue to function as needed (for life safety) during a power outage, it is being relocated to comply with flood requirements and as far from the Gulf of Mexico as possible.

2. *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;*

The applicant was not involved with the original layout of the property and the placement of the building in the rear of the property. The applicant further has no ability to adjust the FEMA/ DEP elevation requirements and or feels it is a good decision to place an emergency generator directly behind the 1978 CCCL.

3. *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;*

The irregular pie shaped lot along with the location of the existing building located between the 1991 CCCL and 1978 CCCL makes it difficult to locate this generator elsewhere. Placing the generator between the principle structure and the right of way is the only reasonable location for the generator and therefore is the minimum variance required. The further away from the Gulf of Mexico we feel will assist in the long term maintenance and survival of the generator. During power outages, this unit will power all of the life safety items within the building including the fire alarm, fire pump, elevators, emergency lighting, and any other critical life safety components.

4. *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare;*

Granting of the variance will not be injurious to the neighborhood as the location selected was in an effort to reduce any impact it may have on neighboring properties.

This location is adjacent to the neighbors parking lot as opposed to being placed adjacent to their living or recreation areas.

While taking into account any impact the structure may have on neighboring properties it was determined the proposed location would have the least impact. The generator and platform

will be located approximately 59' from Estero Blvd and 24' from the neighboring property.

Quite contrary to being injurious, we are anticipating this location will enable the generator to continue to function as needed during power outages, assisting in the continued use of the elevator, fire alarms, fire pump, elevators, emergency lighting etc.

5. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

These conditions are not so general or recurrent to amend the regulations. Most property development locates the structures in an effort to maintain the use of the rear property. This development was uniquely developed with the amenities between the condo building and the street right of way.



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please check for meeting changes on our website WWW.FMBGOV.COM

TIME: 9 AM
DATE: January 8, 2023
CASE: VAR20230212
ADDRESS: 6642 Estero Blvd
APPLICANT: Curt Brenner
REQUEST: The applicant is requesting a variance from LDC 34-1174(b) which prohibits the location of accessory uses, including elevated emergency generators, closer to street right-of-way line than the principal building in RM zoning district.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

1. **Requested Motion:**

Meeting Date: January 8, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230162, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

Why the action is necessary:

The applicant wishes to construct an elevated pool closer to the side and rear property lines than allowed by the code.

What the action accomplishes:

Approval of the variance will allow a pool and screen enclosure to be constructed closer to the side and rear water body than the code allows.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

Todd Plaisted, the applicant and owner for the property located at 21391 Widgeon Terrace, is requesting two variances from the Town's Land Development Code (LDC) Table 34-3, which requires accessory structures including swimming pools associated with a single-family home in RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and 25-foot setback from a waterbody. The variance will allow the applicant to construct an elevated pool and screen enclosure in the side yard 7.8 feet from the side property line and 14.3 feet from the mean high water line.

Attachments:

1. 23-190, VAR20230162, 21391 Widgeon Terrace
2. Staff report
3. Exhibit A Application package
4. Exhibit B TC postcard

Financial Impact:

Unknown

6. **Alternative Action**

RECOMMEND DENIAL

7. **Management Recommendations:**

Recommend Approval

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney

Created/Initiated - 12/27/2023
Approved - 12/28/2023
Final Approval - 12/28/2023

RESOLUTION NUMBER 23-190

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230162, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE THE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE THE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Todd Plaisted, owner of the property situated at 21391 Widgeon Terrace, is requesting two variances from LDC Table 34-3 which requires accessory structures including swimming pools associated with a single-family home waterfront lot in the RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and a 25-foot setback from a the mean high water; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W1-022M0.0010; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Conservation" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on December 19, 2023, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA voted to recommend approval with conditions of the variance; and

WHEREAS, on January 8, 2023, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES these two variances from LDC Table 34-3 requires accessory structures including swimming pools associated with a single-family home waterfront lot in the RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and 25 foot setback from a waterbody.

Section 3. In approving/ approving with conditions/ denying the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

- A. There are/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/ is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval of the variance are/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/ is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.
- D. The granting of the variance will/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable

requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Gretchen R. H. Vose., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of January 2024.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20230162

CASE NAME: 21391 Widgeon Terrace; requesting a variance from LDC Table 34-3 which requires accessory structures including swimming pools associated with a single-family home waterfront lot in the RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and a 25 foot setback from a waterbody.

TOWN COUNCIL HEARING DATE: January 8, 2024

LPA HEARING DATE: December 19, 2023

STAFF RECOMMENDATION: APPROVAL

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Todd Plaisted

Request: Variance from LDC Table 34-3 which requires accessory structures including swimming pools associated with a single-family home waterfront lot in RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and a 25-foot setback from a waterbody.

The property is 108 feet wide by 58 feet deep lot along Widgeon terrace. The Applicant is requesting a variance of 2.18 feet for a side yard setback of 7.82 feet and a variance of 10.61 feet from the waterbody for a setback

of 14.39 feet, to build a swimming pool in the west side yard of an existing single-family home.

Subject property: See attached site plan

Physical Address: 21391 Widgeon Terrace

STRAP #: 34-46-24-W1-022M0.0010

FLU: Mixed Residential

Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North: MIXED RESIDENTIAL
RC, Residential conservation

South: MIXED RESIDENTIAL
RC, Residential conservation

East: WETLANDS
RC, Residential conservation

West: WETLANDS
EC, Environmental Conservation

II. BACKGROUND AND ANALYSIS

Background:

Todd Plaisted, the applicant and owner for the property located at 21391 Widgeon Terrace, is requesting two variances from the Town's Land Development Code (LDC) Table 34-3, which requires accessory structures including swimming pools associated with a single-family home in RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and 25-foot setback from a waterbody. The applicant is requesting a variance of 2.18 feet for a side yard setback of 7.82 feet and a variance of 10.61 feet from the waterbody for a setback of 14.39 feet, to build an elevated, attached swimming pool and screen enclosure in the west side yard of an existing single-family home.

Analysis:

The property is 108 feet wide by 58 feet deep lot, zoned Residential Conservation (RC). The purpose of the RC zoning district is to provide stable neighborhoods where single-family/two-family homes are the predominant land use.

The subject property currently supports a single-family residence and is a waterbody lot situated along Widgeon Terrace. As per LDC table 34-3, accessory structure including swimming pools attached to a single-family home in RC zoning district must provide a minimum 10 feet side setback for lots 100 feet wide or greater and 25 feet setback from a waterbody. The existing single-family home does not meet the waterbody setback requirement of the Town's LDC. The Applicant is requesting two variances for the construction of a pool in the west side yard. The requests include 2.18 feet for a side yard setback of 7.82 feet and a variance of 10.61 feet from the waterbody for a setback of 14.39 feet.

Neighborhood Compatibility:

The subject property is part of the Widgeon Terrace residential neighborhood. The existing house is similar in style and nature to the neighboring residences. Most of the properties in this neighborhood include a pool in the rear yard with waterbody setbacks less than required by the Town's LDC. The existing residence also does not comply with the LDC's required waterbody setback of 25 feet from the mean high-water line. Due to the closeness of the house to the mean high water, the proposed pool will only fit in the west side yard, the size of the pool proposed, will only fit in this location with approval of these variances.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. *That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request **is**/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

There are exceptional conditions inherent to the property. The subject property is a 108 feet wide and 58 feet deep lot. The Widgeon Terrace neighborhood also includes a portion of the right of way within the property lines making the depth of the lot fairly restrictive. The applicant originally began the design of the pool when the side yard setback was 7.5 feet, however this setback requirement changed prior to the applicant submitting their application.

- b. *That the conditions justifying the variance are/**are not** the result of actions of the applicant taken after the adoption of the regulation in question.*

The lots in this neighborhood are particularly narrow and because they back up to a natural waterbody, the rear setback for any structure is 25 feet. The setback requirements have changed.

- c. *That the variance granted **is**/is not the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

The narrow lot, backing on to a natural waterbody requires a variance to construct a reasonable size pool. The variance request is minimal.

- d. *That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

The conditions or circumstances on this specific property for which a variance is sought are not general in nature and do not warrant a code change.

III. RECOMMENDATION

Staff has reviewed the request for a variance from LDC Table 34-3 which requires an accessory structure like a swimming pool attached to a single-family home in RC zoning district to provide a minimum 10 feet side setback for lots 100 feet wide or greater and 25 feet setback from a waterbody and found that the variance request meets the requirements set-forth in sec. 34-87.

At the December 19th LPA hearing the LPA recommended approval of the request with of vote of 7-0. Following that hearing the applicant reached out to staff to let them know that a screen enclosure is anticipated and a condition applying to a screen enclosure was removed.

Staff recommends **APPROVAL** of VAR20230162, a request for a variance of 2.18 feet for a side yard setback of 7.82 feet and a variance of 10.61 feet from a waterbody for a setback of 14.39 feet, to build an elevated, attached swimming pool with a screen enclosure, in the west side yard of an existing single-family home.

IV. CONDITIONS FOR APPROVAL

If the variance is approved, the condition below is recommended by staff.

- 1) Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

V. EXHIBITS

Exhibit A: Complete Application Packet
Exhibit B: Postcards to Adjacent Property Owners



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 21391 Widgeon Terrace, Fort Myers Beach, FL 33931

STRAP Number: 34-46-24-W1-022MO.0010

Applicant: Todd Plaisted

Phone: N/A

Contact Name: Attorney Robert Burandt

Phone: (239) 542-4733

Email: Robert@capecoralattorney.com

Fax: (239) 542-9203

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: 6-Units

Platted Overlay:

☐ YES

☐ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Todd Plaisted

Phone: _____

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: c/o Robert Burandt, Esquire, 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904

Email: Robert@capecoralattorney.com

Fax: (239) 542-9203

Contact Name: Robert Burandt

Phone: (239) 542-4733



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Steeven Knight Phone: (239) 641-2628
Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904
Email: islandspsfl@gmail.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Attorney Robert Burandt Phone: (239) 542-4733
Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904
Email: robert@capecoralattorney.com Fax: (239) 542-9203

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34-1174 - Side setback, etc.
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☒ Other. Please Explain: Variance

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: N/A Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Todd Plaisted Phone: _____

Mailing Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904

Email: Robert@capecoralattorney.com Fax: (239) 542-9203

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Todd Plaisted swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Todd Plaisted
Signature

Todd Plaisted
Printed Name

STATE OF FL COUNTY OF LEE

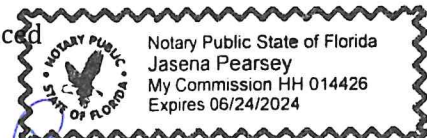
The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 15th day of MAY, 2022, by

[Signature] ☒ who is personally known to me OR ☐ who has produced

MN D/L as identification.

(SEAL)



Jasena Pearsey
Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address
Todd Plaisted

Percentage Ownership
100%



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, _____ (name), as _____ (title) of _____ (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

N/A

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 34-46-24-W1-022MO.0010

Property Address: 21391 Widgeon Ter., Ft. Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: 1357 Page: 1089 Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

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COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 102.12 ft +/- feet
Depth (please provide an average width if irregular in shape) 99.81 ft +/- feet
Frontage on street: 102.12 ft +/- feet. Frontage on waterbody: 100.76 ft +/- feet
Total land area: 9570.55 sq ft (0.22 acres) ☒ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Big Carlos Pass Bridge

County Rd 865, Fort Myers Beach, FL 33931 Head west on Estero Blvd 2. Turn right onto Mound Rd 3. Turn left onto Noddy Tern Dr

4. Continue onto Widgeon Terrace Partial restricted usage road Destination will be on the right 2.4 mi

Head west on Estero Blvd 2. Turn right onto Mound Rd 3. Turn left onto Noddy Tern Dr 4. Continue onto Widgeon Terrace

Partial restricted usage road Destination will be on the right 2.4 mi

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☐ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|--|--|
| ☐ Low Density | ☐ Marina |
| ☐ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: Plaisted Pool
Authorized Applicant: Todd Plaisted
LeePA STRAP Number: 34-46-24-W1-022MO.0010

Current Property Status: Single Family Residence	
Current Zoning: Residential (RC)	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density:	Platted Overlay? ☐ Yes ☐ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

34-1174 34-638	Rear and side setbacks

Complete the narrative statements below for EACH variance requested.



Case # _____

Date Received: _____

PART I
Narrative Statements

Request for variance from 34-1174 **(LDC Section number)**

Explain the specific regulation contained in this section from which relief is sought:

The applicant requests a variance to construct his pool within 16 1/2 feet from the rear property line. The current code is 34-638 which is 25 feet. The neighbor residing at 21401 Widgeon Terrace, Fort Myers Beach, FL pool is constructed within 25 feet. See the picture marked as Exhibit "1" (Neighbor's Pool)

The applicant also requests a variance from the current 25 foot setback pursuant to Table 34-3 to be within 7 1/2 feet of the side property line. Please note that this setback was modified from 7 1/2 feet to 25 feet in February of 2022.

Attached is the Lee County Property Appraiser's Print Out for the applicant's house marked as Exhibit "2". Exhibit "3" is a survey showing where the pool is to be located .

A photograph of the residence and property line is marked as Exhibit "4". Photographs of the planned area for the pool is marked as Exhibit "5" and "6". A picture of the applicants house from the back bay is Exhibit "7", and a survey of the applicant's property is Exhibit "8".

Reasons for request

Explain why the variance is needed:

The property has only one possible location for a pool as demonstrated on the survey is marked as Exhibit "3".



Case # _____

Date Received: _____

Explain the possible effect the variance, if granted, would have on surrounding properties:

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The adjacent property on the pool side will be 7 1/2, the former setback amount. The nearest structure pool side is the elevated house with a substantial hedge on the property line, with the garbage being next to the purported pool. See Exhibit "5", Picture 1 and 2. Picture #5 shows the applicant's house and the potentially affected neighbor.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

Without these two (2) variances, the applicant will not be able to fully enjoy his home. There is just not any place else for their pool.



Case # _____

Date Received: _____

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

The applicant's request is de minimis in nature and will only allow for the development of a private pool that will be accessory to the single-family dwelling unit, or the principal structure.

The variance request is not the result of action taken by the current property owner, who acquired the property in 2021.

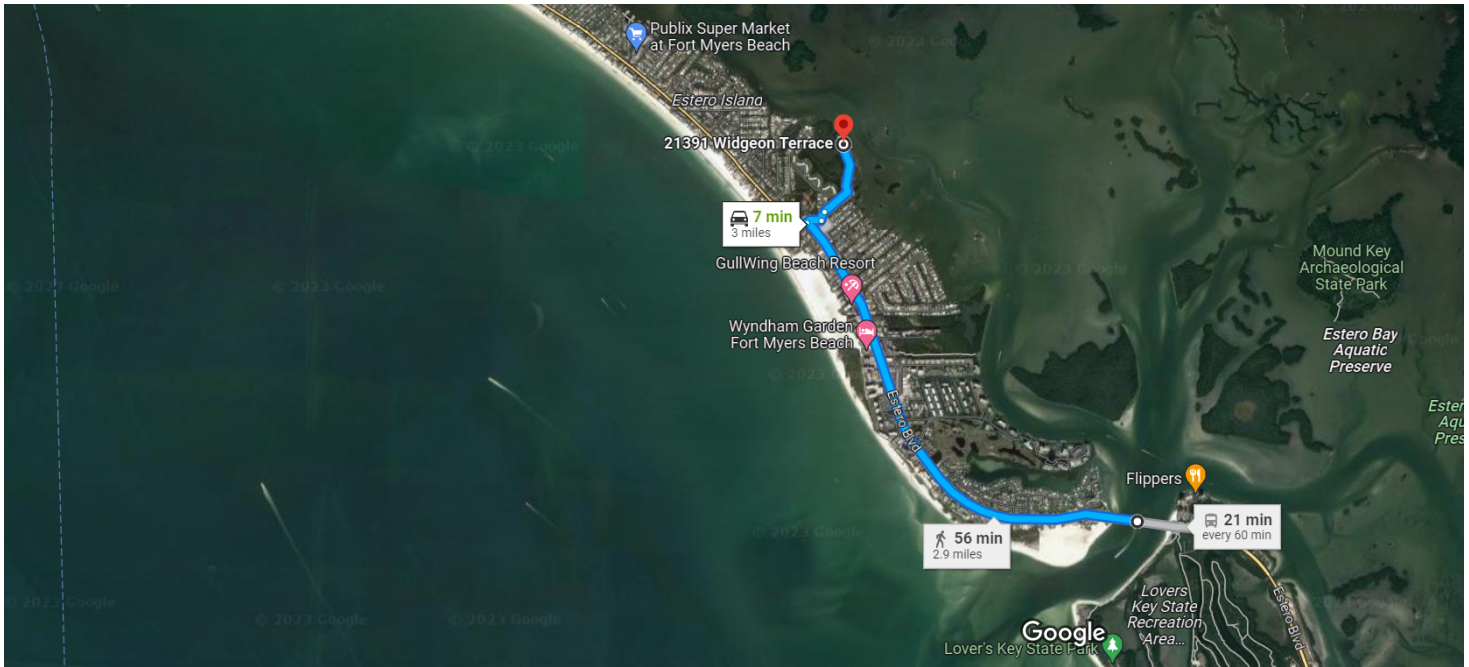
The requested variance is the minimum to relieve the applicant of the code requirement. The variance is from the requirement that restricts accessory uses such as a pool from being located closer to Estero Bay and his daughter to the south.

The space between the principal structure and the bay is the only available location for the construction of a pool on this Property.

Exhibit 6-3 Pg 8 - D

Big Carlos Pass Bridge to 21391 Widgeon Terrace, Fort Myers Beach, FL 33931

Drive 3.0 miles, 7 min



Imagery ©2023 Airbus, Landsat / Copernicus, Maxar Technologies, U.S. Geological Survey, Map data ©2023 Google 2000 ft

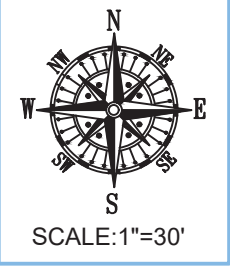
 **via Estero Blvd** **7 min**
Fastest route now due to traffic conditions 3.0 miles
This route has restricted usage or private roads.

 **via Estero Blvd** **56 min**
2.9 miles

 **11:57 AM—12:18 PM** **21 min**
  410 

Explore nearby 21391 Widgeon Terrace

Restaurants Hotels Gas stations Parking Lots More



- TYPE OF SURVEY:**
- ☐ BOUNDARY
 - ☐ ALTA/NSPS
 - ☒ CONSTRUCTION
 - ☒ TOPOGRAPHIC
 - ☐ CONDOMINIUM
 - ☐ SPECIAL PURPOSE

PRINTING INSTRUCTIONS

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(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

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CERTIFIED TO
TODD R PLAISTED

CERTIFICATION

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE AS OUTLINED IN CHAPTER 5J-17.051 & 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT THE ELECTRONIC SIGNATURE AND SEAL HEREON MEETS PROCEDURES AS SET FORTH IN CHAPTER 5J-17.062. PURSUANT TO SECTION 472.025, FLORIDA STATUTES.

SIGNATURE _____ DATE: 8-24-2023

PABLO ALVAREZ - PROFESSIONAL SURVEYOR AND MAPPER FLORIDA REGISTRATION NO. 7274 (NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR THE ELECTRONIC SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER SHOWN ABOVE)

BEARING REFERENCE:
CENTER LINE OF 93rd AVENUE AS N 88°46'09" W
AS REFERENCED IN SUBJECT PROPERTY LEGAL DESCRIPTION.
ALL BEARINGS SHOWN HEREON REFERENCED THERETO.

Job Number : 179798-SW	Field: K.A.
Drawn By : E.I.	Date of Field Work : 07/28/2023

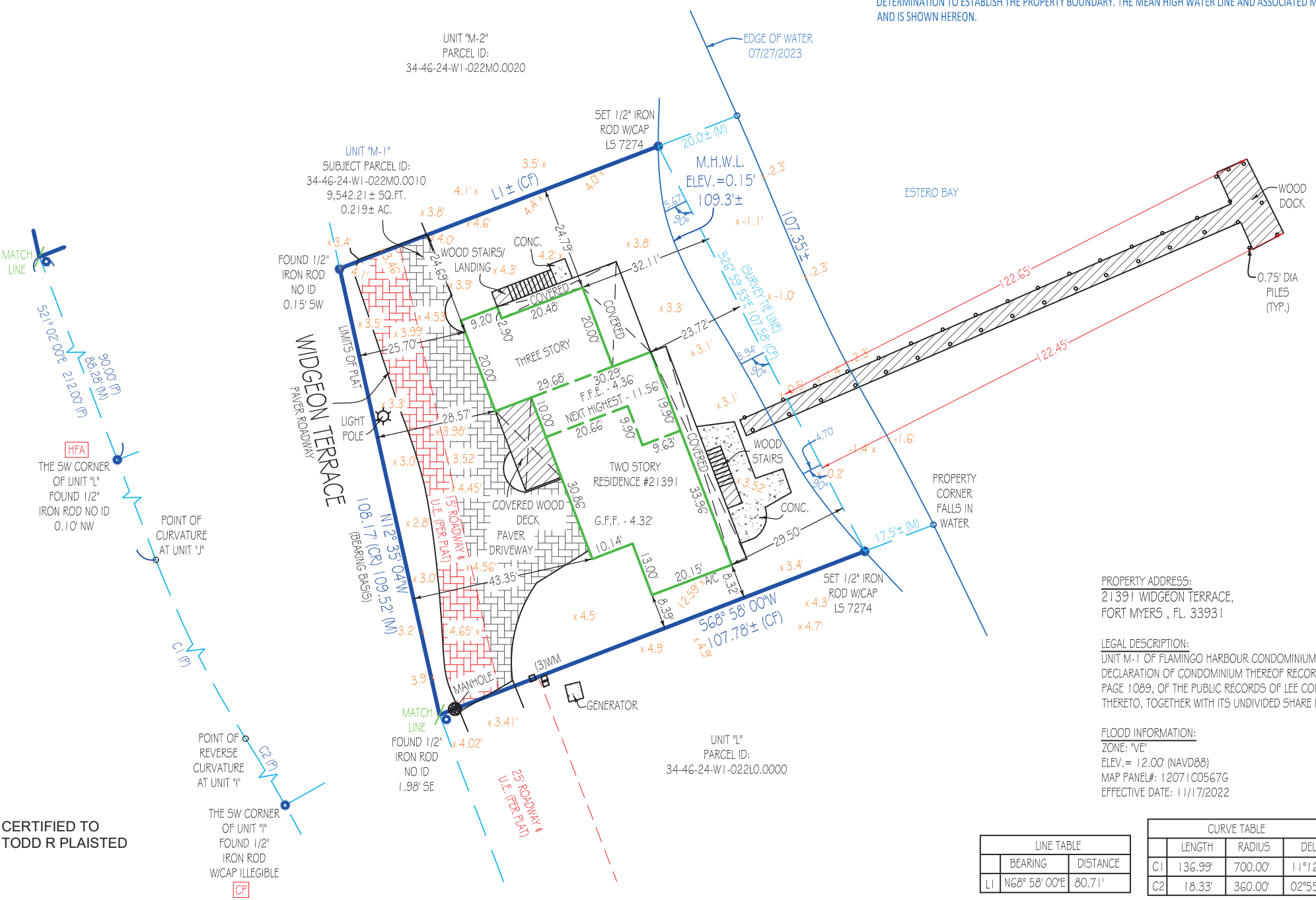
PURPOSE OF SURVEY: PROPERTY IMPROVEMENTS-OTHER

REVISIONS	
UPDATE - E.I. - 08/23/2023	

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PROPERTY ADDRESS:
21391 WIDGEON TERRACE,
FORT MYERS , FL. 33931

LEGAL DESCRIPTION:
UNIT M-1 OF FLAMINGO HARBOUR CONDOMINIUM, A CONDOMINIUM ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF RECORDED IN OFFICIAL RECORDS BOOK 1357, PAGE 1089, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND ALL AMENDMENTS THERETO, TOGETHER WITH ITS UNDIVIDED SHARE IN THE COMMON ELEMENTS.

FLOOD INFORMATION:
ZONE: "VE"
ELEV. = 12.00' (NAVD88)
MAP PANEL#: 12071C0567G
EFFECTIVE DATE: 11/17/2022

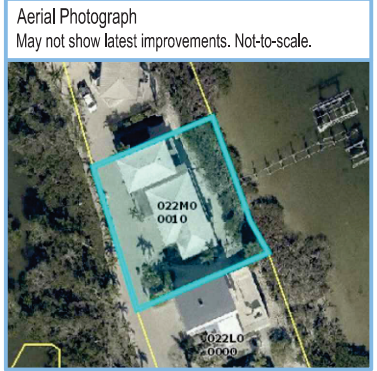
LINE TABLE			CURVE TABLE				CHORD LENGTH	CHORD BEARING
	BEARING	DISTANCE		LENGTH	RADIUS	DELTA		
			C1	136.99'	700.00'	111°247"	136.77'	526°38'23"E
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LINETYPES:			
BOUNDARY		BUILDING	
EASEMENT		CHAIN LINK FENCE	
WOOD FENCE		PLASTIC FENCE	
OVERHEAD CABLE			

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Benchmark: DN3725
Benchmark Elev.: 3.27'
Benchmark Datum: NAVD 88
Elevations on Drawing are in:
N.G.V.D.29 ☒ N.A.V.D.88

"CP" = CONTROLLING POINT (POINT OF ROTATION) "HFA" = HELD FOR ALIGNMENT - ALL OTHER MONUMENTATION AND IMPROVEMENTS RELATIVE THERETO

This survey has been issued by the following Landtec Surveying office:
700 W. Hillsboro Blvd. Suite 4-100
Deerfield Beach, FL 33441
Office: (561) 367-3587 Fax: (561) 465-3145
www.LandtecSurvey.com



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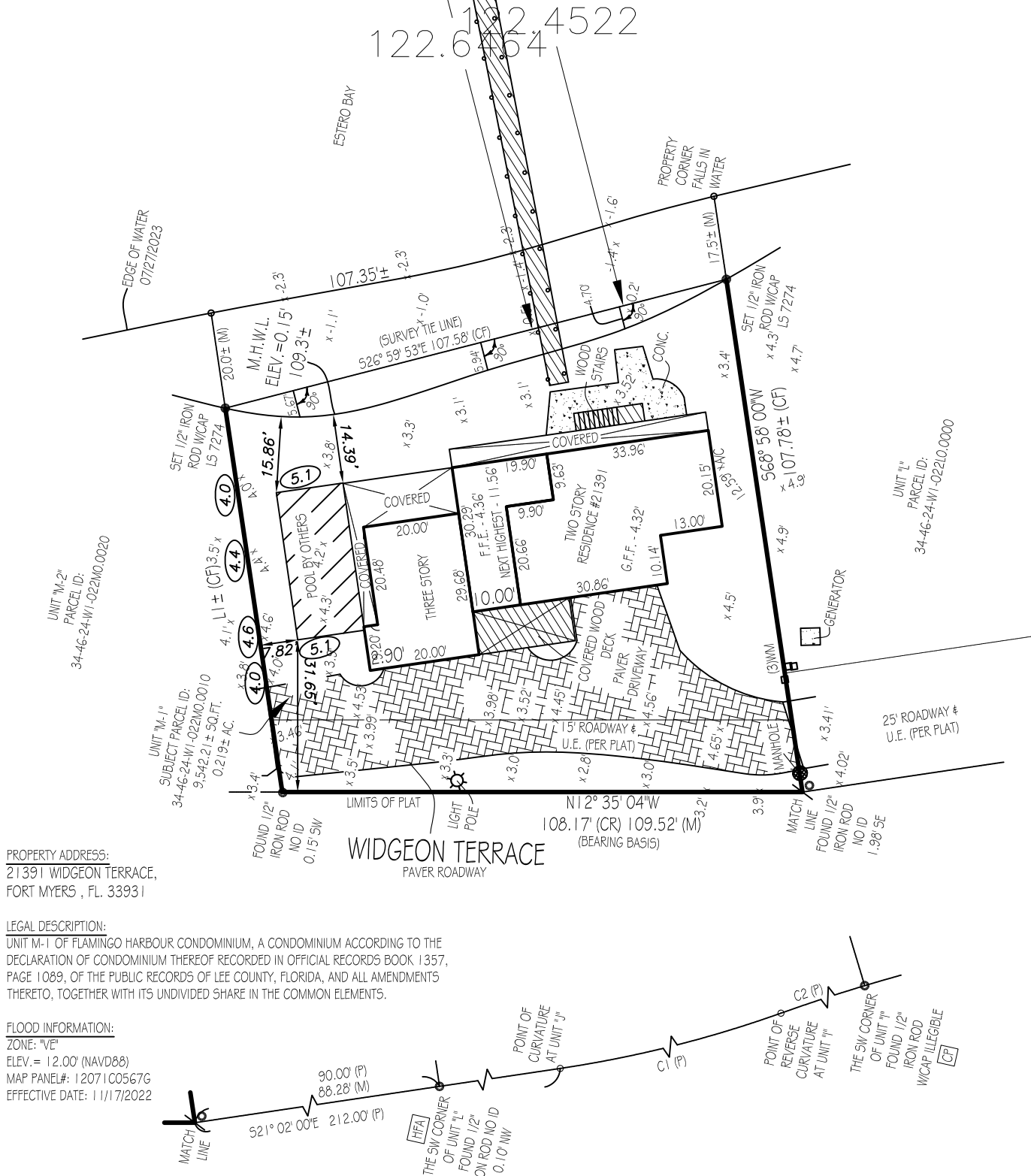
Nov 07, 2023 - 4:26pm E:\Wal Tech\WAL TECH\Jobs\2023\David Ward\21391 Widgeon ter - PLAISTED\21391 WIDGEON TER SITE.dwg



LINE TABLE		
	BEARING	DISTANCE
L1	N68° 58' 00"E	80.71'

CURVE TABLE				CHORD LENGTH	CHORD BEARING
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FLOOD INFORMATION:
ZONE: "VE"
ELEV. = 12.00' (NAVD88)
MAP PANEL#: 12071 C0567G
EFFECTIVE DATE: 11/17/2022

THE SURVEY WAS PERFORMED BY: LANDTEC SURVEYING

50.2 DENOTES EXISTING ELEVATION
50.2 DENOTES PROPOSED ELEVATION

~ DENOTES DRAINAGE FLOW
— OHL — DENOTES OVERHEAD LINES
● PP DENOTES POWER POLE
- W - W - W - DENOTES WATER LINES

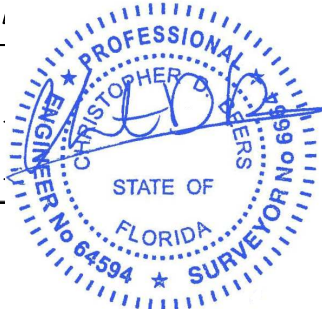
THIS SKETCH IS CERTIFIED ONLY AS TO FIELD CONDITIONS ON:

11/7/23

WTE JOB # _____
SCALE: 1"=30'

WAL TECH, LLC.
WATER, AIR, LAND
524 W Virginia Ave Punta Gorda FL 33950
PH:(941) 628-0635 EMAIL:bgaraimondo@comcast.net

CHRISTOPHER BEERS, PE
FLORIDA REG. NO. 64594
DATE _____



Big Gator Pools and Spas

1749 NE 10th Ter, Unit 6, Cape Coral, FL 33909

RE: Variance request for : 234477 / 21391 Widgeon ter. / New elevated pool

PERMIT # 234477

In response to the last Zoning review letter we received – I have attached a NEW Survey showing the mean high water line and a new Site plan showing the proposed pool location with setbacks for review.

Please see the attached Rejection Letter and the corrected Variance Request with New Survey and New Site Plan as requested.

The corrected pages are Pg 17 Survey and Pg 18 Site Plan

Thank you.

David A Ward

Priority Permitting Services

941-628-8850

dward@git-fl.com



Date: 08/31/2023

Contractor: Big Gator Pools and Spas

RE: 234477 / 21391 Widgeon ter. / New elevated pool

Cc: Property Owner

The drawings submitted for the referenced project have been reviewed following the 7th Edition (2020) Florida Building Codes, Florida Statutes (F.S), and the Town of Fort Myers Beach Land Development Code. For the reasons listed below, we cannot approve your application at this time.

Please provide the Rejection Letter and a Cover Letter showing where each corrected item can be found.

3rd Zoning Review Review

Kendra Rosa / Kendra@fmbgov.com

Once variance has been approved through Town Council, resubmit the resolution as a resubmittal. The zoning review for the pool cannot be completed at this time.

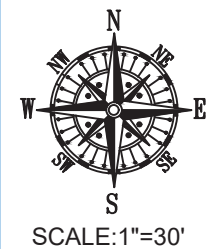
PLEASE NOTE:

- **Mailed in or paper plans will not be accepted.**
- Submit all corrections together at one time with an appropriate response/ cover letter showing where each corrected item can be found to resubmittal@fmbgov.com.
- Please note that no other reviews will be done until the **Zoning Review** is approved.
- Resubmittals will not be processed unless all review comments are addressed.

Please refer to the **Permit Portal** to access a copy of this rejection letter.

Sincerely,

Town of Fort Myers Beach Building Services and Community Development Departments.



TYPE OF SURVEY:

- ☐ BOUNDARY
☐ ALTA/NSPS
☒ CONSTRUCTION
☒ TOPOGRAPHIC
☐ CONDOMINIUM
☐ SPECIAL PURPOSE

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TODD R PLAISTED

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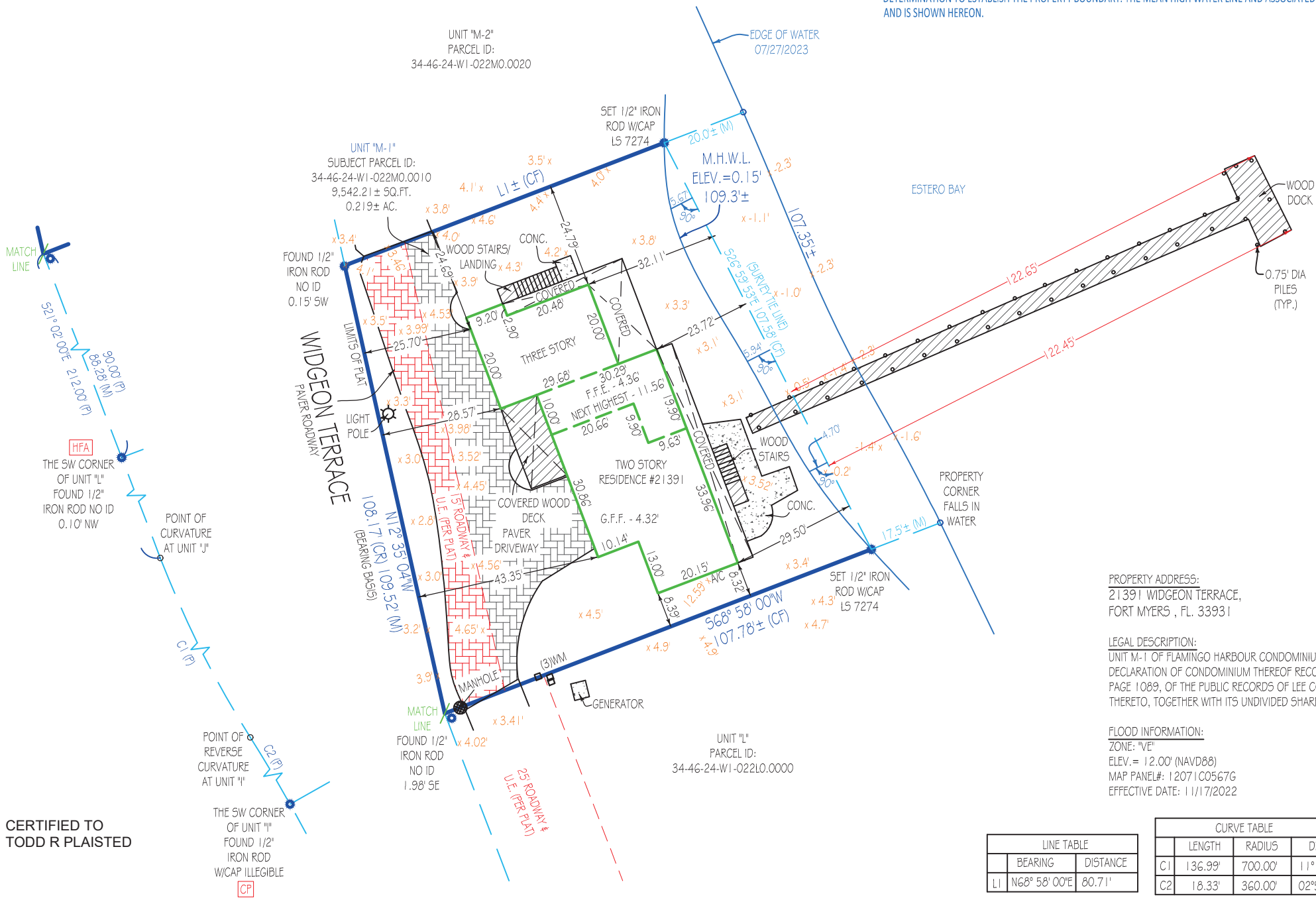
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700 W. Hillsboro Blvd. Suite 4-100
Deerfield Beach, FL 33441
Office: (561) 367-3587 Fax: (561) 465-3145
www.LandtecSurvey.com



LICENSED BUSINESS No. 8507

Aerial Photograph

May not show latest improvements. Not-to-scale.



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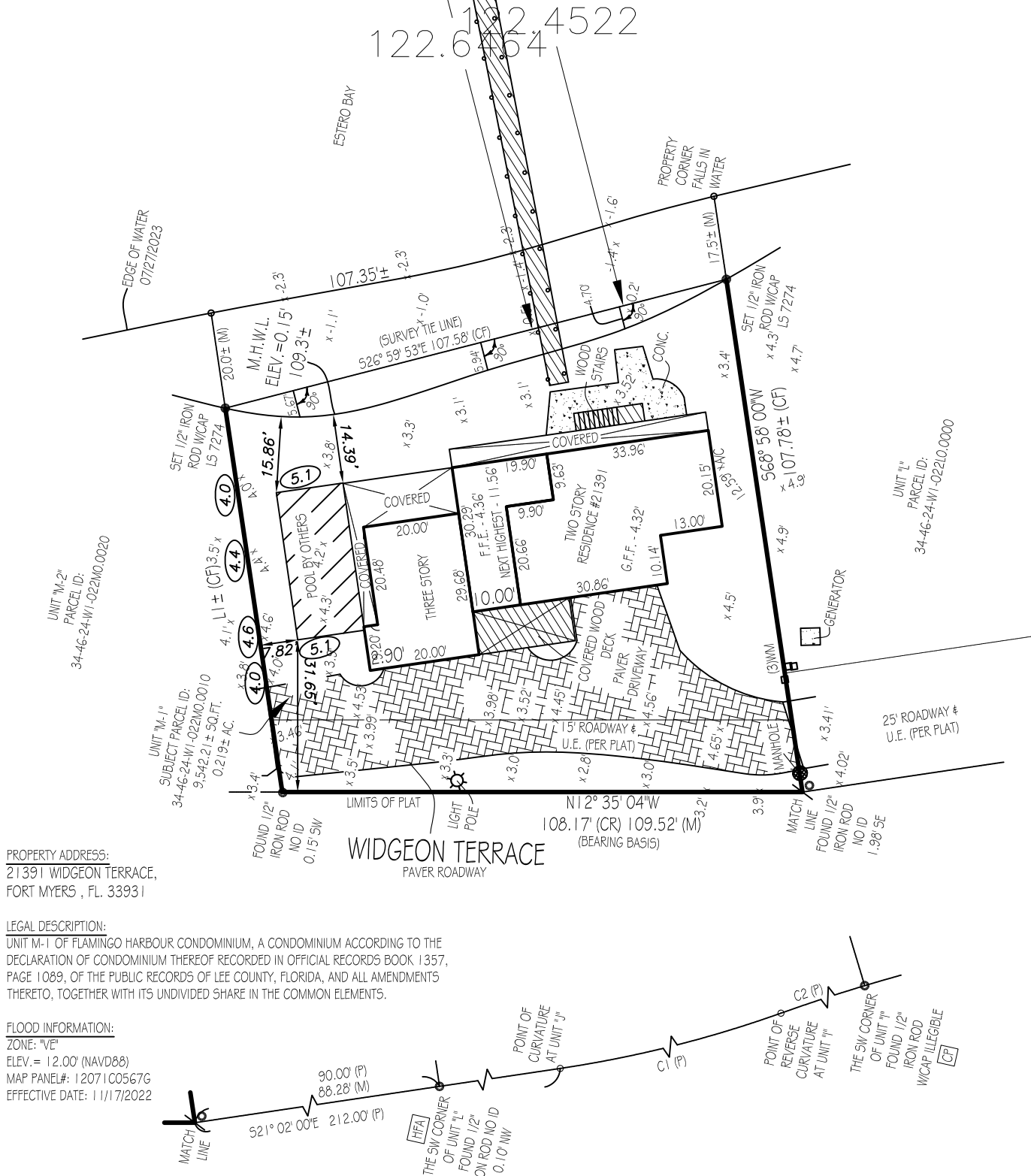
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LINE TABLE		
	BEARING	DISTANCE
L1	N68° 58' 00"E	80.71'

CURVE TABLE				CHORD LENGTH	CHORD BEARING
	LENGTH	RADIUS	DELTA		
C1	136.99'	700.00'	11°12'47"	136.77'	S26°38'23"E
C2	18.33'	360.00'	02°55'03"	18.33'	S30°47'15"E

4. RECORD DATA INDICATES OWNERSHIP TO THE EDGE OF WATER. ESTERO BAY IS TIDALLY INFLUENCED AND REQUIRES A MEAN HIGH WATER DETERMINATION TO ESTABLISH THE PROPERTY BOUNDARY. THE MEAN HIGH WATER LINE AND ASSOCIATED MEANDER LINE HAS BEEN ESTABLISHED AND IS SHOWN HEREON.



PROPERTY ADDRESS:
21391 WIDGEON TERRACE,
FORT MYERS , FL. 33931

LEGAL DESCRIPTION:
UNIT M-1 OF FLAMINGO HARBOUR CONDOMINIUM, A CONDOMINIUM ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF RECORDED IN OFFICIAL RECORDS BOOK 1357, PAGE 1089, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND ALL AMENDMENTS THERETO, TOGETHER WITH ITS UNDIVIDED SHARE IN THE COMMON ELEMENTS.

FLOOD INFORMATION:
ZONE: "VE"
ELEV. = 12.00' (NAVD88)
MAP PANEL#: 12071 C0567G
EFFECTIVE DATE: 11/17/2022

THE SURVEY WAS PERFORMED BY: LANDTEC SURVEYING

50.2 DENOTES EXISTING ELEVATION
50.2 DENOTES PROPOSED ELEVATION

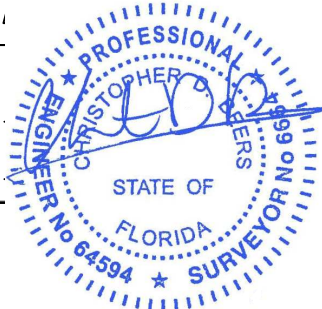
~ DENOTES DRAINAGE FLOW
— OHL — DENOTES OVERHEAD LINES
● PP DENOTES POWER POLE
- W - W - W - DENOTES WATER LINES

THIS SKETCH IS CERTIFIED ONLY AS TO FIELD CONDITIONS ON:

11/7/23
WTE JOB #
SCALE: 1"=30'

WAL TECH, LLC.
WATER, AIR, LAND
524 W Virginia Ave Punta Gorda FL 33950
PH:(941) 628-0635 EMAIL: bgaraimondo@comcast.net

CHRISTOPHER BEERS, PE
FLORIDA REG. NO. 64594
DATE





Attorney Robert Burandt
1714 Cape Coral Pkwy. E
Cape Coral, FL 33904

September 18, 2023

RE: 21391 Widgeon Terr, Fort Myers Beach
Strap # 34-46-24-W1022M.00010
VAR Application 20230162 – Variance request from 34-638 Rear and side

Dear Todd Plaisted,

The Community Development Department has reviewed the submission package for the above-referenced Variance application. At this time, the application is found insufficient and requires additional information.

1. Site plan.-

- a. Please include a site plan showing the proposed location of the pool.
- b. Include the rear setback from the pool shell to the mean high-water line.
- c. Include the side setback from the pool shell to side property line.

Per Sec. 34-638(d)(3)b.1. If the body of water is subject to tidal changes, the setback will be measured from the mean high-water line.

2. 67% Impervious Coverage concerns.

The site appears to be fairly built out and lot area for cover and impervious surface is generally considered the square footage of the property minus wetlands, canals and other waterbodies or lands designated recreation.



Please respond to each sufficiency review comment. If you do not provide the requested supplements or corrections within 60 calendar days of this letter, the Code requires that this application be considered withdrawn. If additional time is needed, the applicant may ask for additional time. Please feel free to contact me if you have any questions.

Sincerely,
Kendra Rosa
Zoning Coordinator
Town of Fort Myers Beach
Community Development Department



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 21391 Widgeon Terrace, Fort Myers Beach, FL 33931

STRAP Number: 34-46-24-W1-022MO.0010

Applicant: Todd Plaisted

Phone: N/A

Contact Name: Attorney Robert Burandt

Phone: (239) 542-4733

Email: Robert@capecoralattorney.com

Fax: (239) 542-9203

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: 6-Units

Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Todd Plaisted

Phone: _____

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: c/o Robert Burandt, Esquire, 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904

Email: Robert@capecoralattorney.com

Fax: (239) 542-9203

Contact Name: Robert Burandt

Phone: (239) 542-4733



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Steeven Knight Phone: (239) 641-2628
Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904
Email: islandspsfl@gmail.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Attorney Robert Burandt Phone: (239) 542-4733
Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904
Email: robert@capecoralattorney.com Fax: (239) 542-9203

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34-1174 - Side setback, etc.
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☒ Other. Please Explain: Variance

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: N/A Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Todd Plaisted Phone: _____

Mailing Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904

Email: Robert@capecoralattorney.com Fax: (239) 542-9203

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Todd Plaisted swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Todd Plaisted
Signature

Todd Plaisted

Printed Name

STATE OF FL COUNTY OF LEE

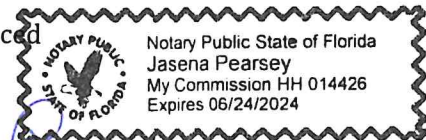
The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 15th day of May, 2022, by

Todd Plaisted ☒ who is personally known to me OR ☐ who has produced

MN D/L as identification.

(SEAL)



Jasena Pearsey
Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address
Todd Plaisted

Percentage Ownership
100%



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, _____ (name), as _____ (title) of _____ (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

N/A

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 34-46-24-W1-022MO.0010

Property Address: 21391 Widgeon Ter., Ft. Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: 1357 Page: 1089 Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 7 of 11



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 102.12 ft +/- feet
Depth (please provide an average width if irregular in shape) 99.81 ft +/- feet
Frontage on street: 102.12 ft +/- feet. Frontage on waterbody: 100.76 ft +/- feet
Total land area: 9570.55 sq ft (0.22 acres) ☒ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Big Carlos Pass Bridge
County Rd 865, Fort Myers Beach, FL 33931 Head west on Estero Blvd 2. Turn right onto Mound Rd 3. Turn left onto Noddy Tern Dr

4. Continue onto Widgeon Terrace Partial restricted usage road Destination will be on the right 2.4 mi

Head west on Estero Blvd 2. Turn right onto Mound Rd 3. Turn left onto Noddy Tern Dr 4. Continue onto Widgeon Terrace
Partial restricted usage road Destination will be on the right 2.4 mi

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☐ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|--|--|
| ☐ Low Density | ☐ Marina |
| ☐ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- ☐ C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- ☐ C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: Plaisted Pool
Authorized Applicant: Todd Plaisted
LeePA STRAP Number: 34-46-24-W1-022MO.0010

Current Property Status: Single Family Residence	
Current Zoning: Residential (RC)	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density:	Platted Overlay? ☐ Yes ☐ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

34-1174 34-638	Rear and side setbacks

Complete the narrative statements below for EACH variance requested.



Case # _____

Date Received: _____

PART I
Narrative Statements

Request for variance from 34-1174 **(LDC Section number)**

Explain the specific regulation contained in this section from which relief is sought:

The applicant requests a variance to construct his pool within 16 1/2 feet from the rear property line. The current code is 34-638 which is 25 feet. The neighbor residing at 21401 Widgeon Terrace, Fort Myers Beach, FL pool is constructed within 25 feet. See the picture marked as Exhibit "1" (Neighbor's Pool)

The applicant also requests a variance from the current 25 foot setback pursuant to Table 34-3 to be within 7 1/2 feet of the side property line. Please note that this setback was modified from 7 1/2 feet to 25 feet in February of 2022.

Attached is the Lee County Property Appraiser's Print Out for the applicant's house marked as Exhibit "2". Exhibit "3" is a survey showing where the pool is to be located .

A photograph of the residence and property line is marked as Exhibit "4". Photographs of the planned area for the pool is marked as Exhibit "5" and "6". A picture of the applicants house from the back bay is Exhibit "7", and a survey of the applicant's property is Exhibit "8".

Reasons for request

Explain why the variance is needed:

The property has only one possible location for a pool as demonstrated on the survey is marked as Exhibit "3".

Explain the possible effect the variance, if granted, would have on surrounding properties:

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The adjacent property on the pool side will be 7 1/2, the former setback amount. The nearest structure pool side is the elevated house with a substantial hedge on the property line, with the garbage being next to the purported pool. See Exhibit "5", Picture 1 and 2. Picture #5 shows the applicant's house and the potentially affected neighbor.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

Without these two (2) variances, the applicant will not be able to fully enjoy his home. There is just not any place else for their pool.



Case # _____

Date Received: _____

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

The applicant's request is de minimis in nature and will only allow for the development of a private pool that will be accessory to the single-family dwelling unit, or the principal structure.

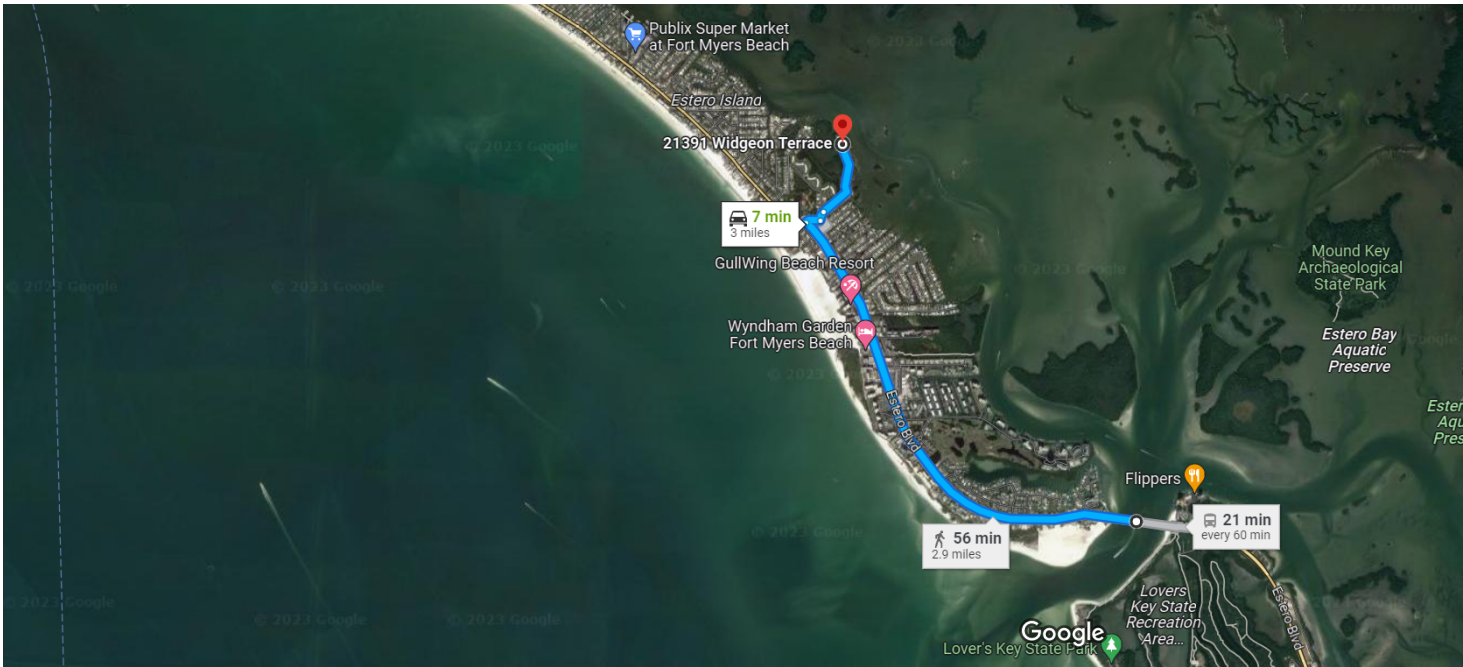
The variance request is not the result of action taken by the current property owner, who acquired the property in 2021.

The requested variance is the minimum to relieve the applicant of the code requirement. The variance is from the requirement that restricts accessory uses such as a pool from being located closer to Estero Bay and his daughter to the south.

The space between the principal structure and the bay is the only available location for the construction of a pool on this Property.

Big Carlos Pass Bridge to 21391 Widgeon Terrace, Fort Myers Beach, FL 33931

Drive 3.0 miles, 7 min

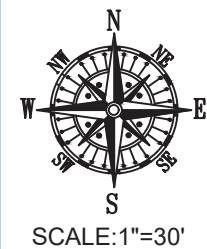


Imagery ©2023 Airbus, Landsat / Copernicus, Maxar Technologies, U.S. Geological Survey, Map data ©2023 Google, 2000 ft

	via Estero Blvd	7 min
	Fastest route now due to traffic conditions	3.0 miles
	This route has restricted usage or private roads.	
	via Estero Blvd	56 min
		2.9 miles
	11:57 AM—12:18 PM	21 min
	410	

Explore nearby 21391 Widgeon Terrace

- Restaurants
- Hotels
- Gas stations
- Parking Lots
- More



TYPE OF SURVEY:

- ☐ BOUNDARY
- ☐ ALTA/NSPS
- ☒ CONSTRUCTION
- ☒ TOPOGRAPHIC
- ☐ CONDOMINIUM
- ☐ SPECIAL PURPOSE

PRINTING INSTRUCTIONS

WHEN PRINTING THIS PDF IN ADOBE, SELECT "ACTUAL SIZE" TO ENSURE CORRECT SCALING. DO NOT USE "FIT".

ABBREVIATION LEGEND

(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

- | | |
|--------------------------------|-------------------------------|
| A OR AL = ARC LENGTH | P = PLAT |
| C/O = CLEANOUT | PC = POINT OF CURVE |
| CA = CENTRAL ANGLE | PCC = POINT OF COMPOUND CURVE |
| CATV = CABLE TV RISER | PH = POOL HEATER |
| CF = CALCULATED FROM FIELD | PI = POINT OF INTERSECTION |
| CH = CHORD DISTANCE | POB = POINT OF BEGINNING |
| CONC. = CONCRETE | POC = POINT OF COMMENCEMENT |
| CR = CALCULATED FROM RECORD | PP = POOL PUMP |
| DE = DRAINAGE EASEMENT | PRC = POINT OF REVERSE CURVE |
| EL OR ELEV = ELEVATION | PT = POINT OF TANGENCY |
| EM = ELECTRIC METER | QTR = QUARTER |
| F.F.E. = FINISHED FLOOR ELEV. | R = RADIUS |
| FIR = FOUND IRON ROD | RNG = RANGE |
| FN = FOUND NAIL | SEC = SECTION |
| FND = FOUND | TR = TELEPHONE RISER |
| G.F.F. = GARAGE FINISHED FLOOR | TWP = TOWNSHIP |
| L = LEGAL DESCRIPTION | UE = UTILITY EASEMENT |
| M = MEASURED | UP = UTILITY POLE |
| OHC = OVERHEAD CABLE | WM = WATER METER |
| | WV = WATER VALVE |

SYMBOLS - NOT-TO-SCALE

(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

- | | |
|--------------------------|-------------------|
| = UTILITY POLE | = WELL |
| = LIGHT POLE | = CENTER LINE |
| = CATCH BASIN | = PARTY WALL |
| = FIRE HYDRANT | = AIR CONDITIONER |
| = MANHOLE | = SEPTIC LID |
| = WATER VALVE | = ELEV. SHOT |
| = WATER METER | |
| = HANDICAP PARKING SPACE | |
| = SEC. QTR. CORNER | |
| = SECTION CORNER | |

CERTIFICATION

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE AS OUTLINED IN CHAPTER 5J-17.051 & 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT THE ELECTRONIC SIGNATURE AND SEAL HEREON MEETS PROCEDURES AS SET FORTH IN CHAPTER 5J-17.062. PURSUANT TO SECTION 472.025, FLORIDA STATUTES.

SIGNATURE _____ DATE: 8-24-2023

PABLO ALVAREZ - PROFESSIONAL SURVEYOR AND MAPPER FLORIDA REGISTRATION NO. 7274 (NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR THE ELECTRONIC SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER SHOWN ABOVE)

BEARING REFERENCE:
CENTER LINE OF 93rd AVENUE AS N 88°46'09" W
AS REFERENCED IN SUBJECT PROPERTY LEGAL DESCRIPTION.
ALL BEARINGS SHOWN HEREON REFERENCED THERETO.

Job Number : 179798-SW	Field: K.A.
Drawn By : E.I.	Date of Field Work : 07/28/2023

PURPOSE OF SURVEY: PROPERTY IMPROVEMENTS-OTHER

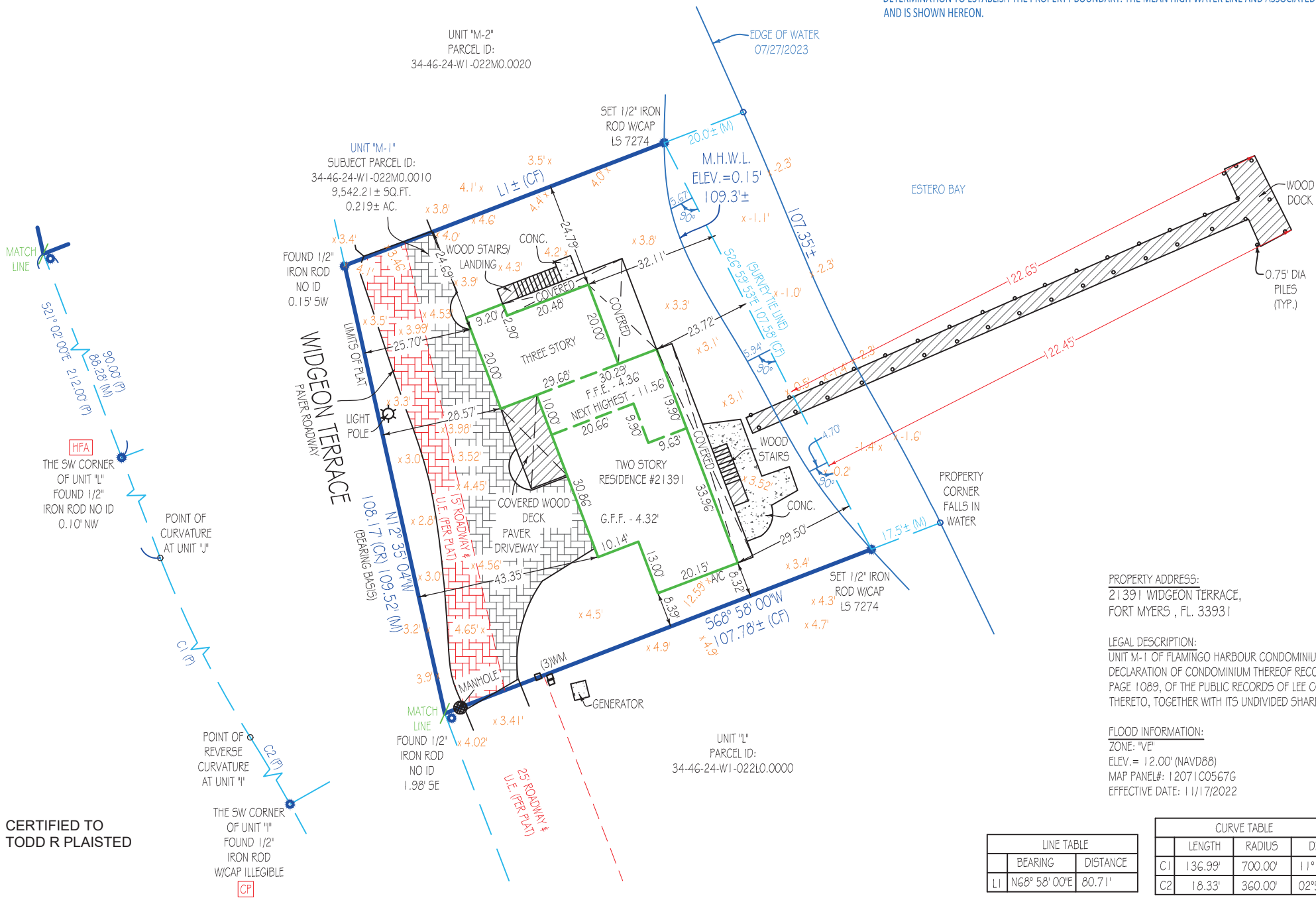
REVISIONS

UPDATE - E.I. - 08/23/2023

Platted Easements & Notable Conditions (unplatted easements also listed if provided): IF APPLICABLE, RECIPIENTS OF THIS SURVEY SHOULD REVIEW THE POSITION OF ANY FENCE LINES SHOWN AND THEIR RELATIONSHIP TO THE BOUNDARY LINE.

- 15' ROADWAY AND UTILITY EASEMENT ALONG WESTERLY BOUNDARY LINE OF SUBJECT LOT.
- PAVER DRIVEWAY EXTENDS THROUGH THE WESTERLY EASEMENT.
- PAVER DRIVEWAY CROSSES THE BOUNDARY LINE ON NORTHERLY AND SOUTHERLY SIDES OF LOT AS SHOWN.
- WOOD DOCK CROSSES THE BOUNDARY LINE ON EASTERLY SIDE OF LOT AS SHOWN.

4. RECORD DATA INDICATES OWNERSHIP TO THE EDGE OF WATER. ESTERO BAY IS TIDALLY INFLUENCED AND REQUIRES A MEAN HIGH WATER DETERMINATION TO ESTABLISH THE PROPERTY BOUNDARY. THE MEAN HIGH WATER LINE AND ASSOCIATED MEANDER LINE HAS BEEN ESTABLISHED AND IS SHOWN HEREON.



PROPERTY ADDRESS:
21391 WIDGEON TERRACE,
FORT MYERS, FL. 33931

LEGAL DESCRIPTION:
UNIT M-1 OF FLAMINGO HARBOUR CONDOMINIUM, A CONDOMINIUM ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF RECORDED IN OFFICIAL RECORDS BOOK 1357, PAGE 1089, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND ALL AMENDMENTS THERETO, TOGETHER WITH ITS UNDIVIDED SHARE IN THE COMMON ELEMENTS.

FLOOD INFORMATION:
ZONE: "VE"
ELEV. = 12.00' (NAVD88)
MAP PANEL#: 12071C0567G
EFFECTIVE DATE: 11/17/2022

LINE TABLE	
BEARING	DISTANCE
L1 N68°58'00"E	80.71'

CURVE TABLE			CHORD LENGTH	CHORD BEARING
	LENGTH	RADIUS		
C1	136.99'	700.00'	111°24'7"	136.77'
C2	18.33'	360.00'	02°55'03"	18.33'

LINETYPES:

- | | | | |
|----------------|--|------------------|--|
| BOUNDARY | | BUILDING | |
| EASEMENT | | CHAIN LINK FENCE | |
| WOOD FENCE | | PLASTIC FENCE | |
| OVERHEAD CABLE | | | |

Elevations, if shown:

Benchmark: DN3725
Benchmark Elev.: 3.27'
Benchmark Datum: NAVD 88
Elevations on Drawing are in:
N.G.V.D.29 ☒ N.A.V.D.88

"CP" = CONTROLLING POINT (POINT OF ROTATION) "HFA" = HELD FOR ALIGNMENT - ALL OTHER MONUMENTATION AND IMPROVEMENTS RELATIVE THERETO

This survey has been issued by the following Landtec Surveying office:

700 W. Hillsboro Blvd. Suite 4-100
Deerfield Beach, FL 33441
Office: (561) 367-3587 Fax: (561) 465-3145
www.LandtecSurvey.com



LICENSED BUSINESS No. 8507

Aerial Photograph

May not show latest improvements. Not-to-scale.



GENERAL NOTES:

1. THIS SURVEY IS BASED UPON RECORD INFORMATION PROVIDED BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.
2. AS INDICATED ABOVE, UNDER "PURPOSE OF SURVEY", IF THIS SURVEY HAS BEEN PREPARED FOR A PURCHASE OR REFINANCE, ITS SCOPE IS LIMITED TO THE DETERMINATION OF TITLE DEFICIENCIES, AND IS NOT INTENDED FOR USE IN DESIGN OR CONSTRUCTION PURPOSES. LANDTEC SURVEYING ASSUMES NO RESPONSIBILITIES FOR ERRORS RESULTING FROM FAILURE TO ADHERE TO THIS CLAUSE.
3. ANY FENCES SHOWN HEREON ARE ILLUSTRATIVE OF THEIR GENERAL POSITION ONLY. FENCE TIES SHOWN ARE TO GENERAL CENTERLINE OF FENCE. THIS OFFICE WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING FROM THE REMOVAL OF, OR CHANGES MADE TO, ANY FENCES UNLESS WE HAVE PROVIDED A SURVEY SPECIFICALLY LOCATING SAID FENCES FOR SUCH PURPOSES. DETERMINATION OF FENCE POSITIONS SHOULD BE BASED SOLELY ON THEIR PHYSICAL RELATIONSHIP TO THE MONUMENTED BOUNDARY LINES.
4. GRAPHIC REPRESENTATIONS MAY HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE MEASURED RELATIONSHIPS - DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED POSITIONS.
5. UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED EXCEPT AS SPECIFICALLY SHOWN.
6. ELEVATIONS ARE BASED UPON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D. 1929) OR NORTH AMERICAN VERTICAL DATUM (N.A.V.D. 1988) AS SHOWN ABOVE.
7. ALL BOUNDARY AND CONTROL DIMENSIONS SHOWN ARE FIELD MEASURED AND CORRESPOND TO RECORD INFORMATION UNLESS SPECIFICALLY NOTED OTHERWISE.
8. ANY CORNERS SHOWN AS "SET" HAVE EITHER BEEN SET ON THE DATE OF FIELD WORK, OR WILL BE SET WITHIN 2 BUSINESS WEEKS OF SAID DATE AND ARE IDENTIFIED WITH A CAP MARKED LS (LICENSED SURVEYOR) #7274.



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please check for meeting changes on our website WWW.FMBGOV.com.

TIME: 9 AM

DATE: January 8, 2023

CASE: VAR20230264

ADDRESS: 5350 Estero Blvd

APPLICANT: Maple Grove 89th Property LLC/ Drew Whiting

REQUEST: The applicant is requesting a variance of 8.5 feet from the LDC Table 34-3 which requires a 15 foot setback in the CR zoning district.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



), 2023 Town of Fort Myers Beach
Community Development Services - Planning Division
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Fort Myers Beach, FL 33931

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Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

PLAISTED TODD R
15781 ANDRIE ST NW
RAMSEY, MN, 55303

TIITF STATE OF FLORIDA
3900 COMMONWEALTH BLVD
TALLAHASSEE, FL, 32399

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

SOUTHERN LIVING RVP LLC
602-B CENTER RD
FORT MYERS, FL, 33907

WOODY JAMES & KRISTINE
1241 71ST AVE
GREELEY, CO, 80634

1. **Requested Motion:**

Meeting Date: January 8, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230264 TO DECREASE THE REQUIRED 15-FOOT SIDE YARD SETBACKS BY 8.5 FEET TO ALLOW 6.5-FOOT SIDE SETBACKS, FOR THE COMMERCIAL RESORT ZONED PROPERTY AT 5350 ESTERO BLVD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The required side setbacks would result in 15 feet of buildable width. Reduction of the setbacks requires Town Council approval of a variance.

What the action accomplishes:

Approval of the variance will allow a home to be built on the property with 6.5 foot side setbacks.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

The applicant is requesting a variance from the Town's Land Development Code (LDC) Table 34-3 which requires that a development in the CR zoning district provide 15-foot side setbacks. The applicant is requesting a 6.5-foot side setback, to match with the surrounding RM zoned properties. This would be a reduction of 8.5 feet from the required setback. The subject property is 45 feet wide by 125 feet deep. It is surrounded by RM zoned properties developed with single family homes. The property was previously developed with a single-family home, up until sometime in 2005. The lot has been vacant since that time.

Attachments:

1. 23-191, VAR20230264 5350 Estero Blvd
2. Staff Report
3. Exhibit A Application
4. Exhibit B TC postcard

Financial Impact:

unknown

6. **Alternative Action**

Deny request

7. **Management Recommendations:**

Approval of VAR20230264

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning
Frankie Kropacek, Operations & Compliance Director

Created/Initiated - 12/27/2023
Approved - 12/28/2023

RESOLUTION NUMBER 23-191

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230264 TO DECREASE THE REQUIRED 15-FOOT SIDE YARD SETBACKS BY 8.5 FEET TO ALLOW 6.5-FOOT SIDE SETBACKS, FOR THE COMMERCIAL RESORT ZONED PROPERTY AT 5350 ESTERO BLVD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, applicant Drew Whiting, on behalf of owner Maple Grove 89th Property LLC, is requesting a variance from Table 34-3 to decrease the side setbacks by 8.5 feet to allow for a 6.5 foot side setback; and

WHEREAS, the STRAP number for the subject property is 33-46-24-W1-00206.0090; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Commercial Resort" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on December 19, 2023, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA voted #-# to recommend _____ of the variance; and

WHEREAS, on January 8, 2024 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Variance do/ do not meet the requirements of the Town Comprehensive Plan and LDC, and approving/ approving with conditions/ denying the Variance is in the best interest of the Town to approve/ approve with conditions/ deny. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES/APPROVES WITH CONDITIONS/DENIES the variance from LDC Table 34-3, a variance per Section 34-268(a)(5), and a variance from Section 34-638(d)(1)g.

Section 3. In approving the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

- A. There are/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval of the variance are/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/ is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.
- D. The granting of the variance will/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Vacant, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 8th day of January 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Gretchen R. H. Vose., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of January 2024.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20230264

CASE NAME: 5350 Estero Blvd; requesting a variance of 8.5 feet from the LDC Table 34-3 which requires a 15 foot setback in the CR zoning district.

TOWN COUNCIL HEARING DATE: January 8, 2024 at 9 AM

LPA HEARING DATE: December 19, 2023 at 9 AM

STAFF RECOMMENDATION: APPROVE

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Drew Whiting/Maple Grove 89th Property LLC

Request: Variance from LDC Table 34-3 which requires a 15-foot side setback in CR zoning district.

Subject property: See attached site plan

Physical Address: 5350 Estero Blvd

STRAP #: 33-46-24-W1-00206.0090

FLU: Mixed Residential

Zoning: Commercial Resort (CR)

Adjacent zoning and land uses:

North:	RESIDENTIAL CONSERVATION (RC) Single-Family Residences
South:	RESIDENTIAL MULTI-FAMILY (RM) Single-Family Residences
East:	RESIDENTIAL MULTI-FAMILY (RM) Single-Family Residences
West:	RESIDENTIAL MULTI-FAMILY (RM) Single-Family Residences

II. BACKGROUND AND ANALYSIS

Background:

Drew Whiting on behalf of the owner, Maple Grove 89th Property LLC, is requesting a variance from the Town's Land Development Code (LDC) Table 34-3 which requires that a development in the CR zoning district provide 15-foot side setbacks. The applicant is requesting a 6.5-foot side setback, to match with the surrounding RM zoned properties. This would be a reduction of 8.5 feet from the required setback.

Analysis:

The purpose of the CR zoning district is to designate suitable locations for motels, resorts, and related services. The subject property is 45 feet wide by 125 feet deep. It is surrounded by RM zoned properties developed with single family homes. The property was previously developed with a single-family home, up until sometime in 2005. The lot has been vacant since that time.

As per LDC table 34-3, a structure in the CR zoning district shall provide side setbacks equal to 15 feet. However development of a home with two 15-foot setbacks, on a 45 foot wide lot, would only be 15-feet wide.

Neighborhood Compatibility:

The surrounding properties are mostly vacant, however the remaining homes in the vicinity appear to provide similar side setbacks as the setbacks proposed by the applicant. The land development code requires 6.5 foot side setbacks in the RM zoning district for single family residences on lots less than 50 feet wide. The applicant is also proposing to meet the front setback of 25 feet, to match the surrounding lots zoned RM.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request*

is/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

The property is only 45 feet wide and the CR zoning district setback will result in only 15 feet of buildable width. The applicant is proposing the setback that the surrounding properties, zoned RM, are required to meet.

- b. That the conditions justifying the variance are/**are not** the result of actions of the applicant taken after the adoption of the regulation in question.*

The property is zoned CR, while the surrounding, similarly sized, properties are zoned RM. The application of CR zoning district regulations on this size lot results in a lot that it difficult to develop.

- c. That the variance granted **is**/is not the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to this property.*

The applicant is proposing the same setback as adjacent properties are required to meet.

- d. That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- e. That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

This lot is an anomaly in size for the CR zoning district.

III. RECOMMENDATION

Staff has reviewed the request for a variance from LDC Table 34-3 which requires that a structure in the CR zoning district provide side setbacks of 15 feet and found that the variance request does meet the requirements set-forth in sec. 34-87. This lot is too small to apply the code required side setbacks and also provide a buildable area.

At the December 19th LPA hearing the LPA recommended approval of the request with a 7-0 vote.

Therefore, staff recommends **APPROVAL** of VAR20230264, a request for variance of 8.5 feet from the required side setbacks to accommodate a new home.

IV. CONDITIONS

If the Town Council approves the requested variance, the following condition of approval are recommended:

A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

Attachments

Exhibit A – Application

Exhibit B – Postcards to adjacent property owners



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 5350 Estero Blvd, Fort Myers Beach, Florida, 33931

STRAP Number: 33-46-24-W1-00206.0090

Applicant: Maple Grove 89th Property LLC

Phone: _____

Contact Name: Drew Whiting

Phone: 224.723.9198

Email: dwhiting@homebound.com

Fax: _____

Current Zoning District: CR - Commercial Resort

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: Mixed

Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

☐ Special Exception

☒ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Maple Grove 89th Property LLC

Phone: _____

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

Applicant Mailing Address: 5350 Estero Blvd, Fort Myers Beach, Florida, 33931

Email: mark@mtlcompanies.com

Fax: _____

Contact Name: Drew Whiting, Homebound

Phone: 224.723.9198



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|--|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☒ Authorized Representative* ☐ Other* (please indicate) _____ | | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Drew Whiting Phone: 224.723.9198
Address: 422 Harbor Ct | Fort Myers Beach, FL 33931
Email: dwhiting@homebound.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Samir Malviya Phone: 248.894.9610
Address: 422 Harbor Ct | Fort Myers Beach, FL 33931
Email: smalviya@homebound.com Fax: _____

Name: Tyler Knafelc Phone: 719.213.4409
Address: 422 Harbor Ct | Fort Myers Beach, FL 33931
Email: tknafelc@homebound.com Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34 - 638
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- ☐ Appeal of Administrative Action
- ☐ Vacation ☐ Right-of-Way ☐ Easement
- ☐ Other. Please Explain: _____
- _____
- _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical

presence OR ____ online notarization, this ____ day of _____, 20____, by

_____, ☐ who is personally known to me OR ☐ who has produced

_____ as identification.

(SEAL)

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____ Signature	_____ Printed Name
--------------------	-----------------------

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Drew Whiting (name), as Architectural Associate (title)
of Homebound Florida, LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

Homebound Florida, LLC

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Drew Whiting

Typed or Printed Name

Architecture Associate

Title

11/22/2023

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 33-46-24-W1-00206.0090

Property Address: 5350 Estero Blvd

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☒ Yes. Property identified in subdivision: Gulf Heights

Book: 6 Page: 39 Unit: _____ Block: 6 Lot(s): 9

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 45 feet
Depth (please provide an average width if irregular in shape) 125 feet
Frontage on street: 45 feet. Frontage on waterbody: N/A feet
Total land area: 5,625 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: 5350 Estero Blvd
Authorized Applicant: Drew Whiting
LeePA STRAP Number: 33-46-24-W1-00206.0090

Current Property Status:	
Current Zoning: CR - Commercial Resort	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density: Mixed	Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
34-638 Minimum Setbacks	

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from 34-638 (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
Seeking a reduction to the side setback requirement of 15' down to 6.5'; as the subject property
is surrounded and adjacent to RM Residential Multifamily zoning, we would like to apply
Table 34-3 Note (6) exception for side setbacks for single-family homes in RM zoning districts
to side setbacks of 6.5 feet for lots less than 50'

Reasons for request

Explain why the variance is needed:
The subject property is in an CR Commercial Resort zoning district but is surrounded by RM
Residential Multifamily Districts on all sides. The subject property was previously approved for
a Minimum Use Determination for allowing the lot to be built on; however, under the existing zoning,
the side setbacks place a constraint on the lot which make it unbuildable. The lot's dimensions of
45' wide by 125' deep allow a very narrow buildable footprint of 15' wide by 95' deep
(15' side setbacks, 10' front setback, and 20' rear setback). The adjacent RM districts allow
6.5 side setbacks (exception note 6), 25' front setbacks, and 20' rear setbacks. By reducing the
side setbacks to 6.5' for single-family residence, the site's buildable footprint would be substantially
improved at 32'.

Explain the possible effect the variance, if granted, would have on surrounding properties:

The variance would align the subject property to the same side setback requirements (for single-family and two-family residences) as surrounding properties at 6.5' - creating a more consistent streetscape. For one, this makes the subject property buildable which helps relieve this street of the empty lot on the subject property, and secondly, it creates a similar size and density to the surrounding properties.

The subject property is proposing a 25' front setback (with encroachment for front porch stairs) that also aligns with the 25' front setback at the surrounding properties so as not to build closer than those houses allow. While the CR zoning district technically allows a 10' front setback, we prefer the 25' setback for both remaining consistent with the rest of the street, and creating additional off-street parking on the subject property.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

The subject property is zoned to CR which is intended for much larger lots (as has been recognized by the approved Minimum Use Determination for this lot) CR zoning requires a minimum lot area of 20,000 sf and the subject property is 5625 sf. With a substantially smaller size, the larger side setbacks CR zoning requires place a hardship on the 45' lot width by only allowing a 15' wide buildable footprint. In addition, the lot is surrounded by RM zoning district which allows a reduction of side setbacks to 6.5' (for lots less than 50' wide) for single-family and two-family residences. The same logic for that exception applies well to the subject property.



This property qualifies for a variance in that a Minimum Use Determination has already been approved for the lot, and it requires a variance to make the a house buildable. The conditions provided justifying the variance are no result of the applicant. The requested variance is the minimum that will relieve the applicant of the burden created by the reduced lot width; the reduction of the side setbacks by 8.5' will allow a 32' wide floor plan which aligns with what is being proposed. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; This is a unique condition as most lots zoned CR Commercial Resort are not of this small a size and not necessarily isolated in being surrounded by different zonings; however, Note 6 of Table 34-3 could also apply to single-family and two-family residences in CR zoning districts (in addition to RM).

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

“Variance is requested from...” Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

5350 ESTERO BOULEVARD,
FORT MYERS BEACH, FLORIDA 33931

Strap # 33-46-24-W1-00206.0090

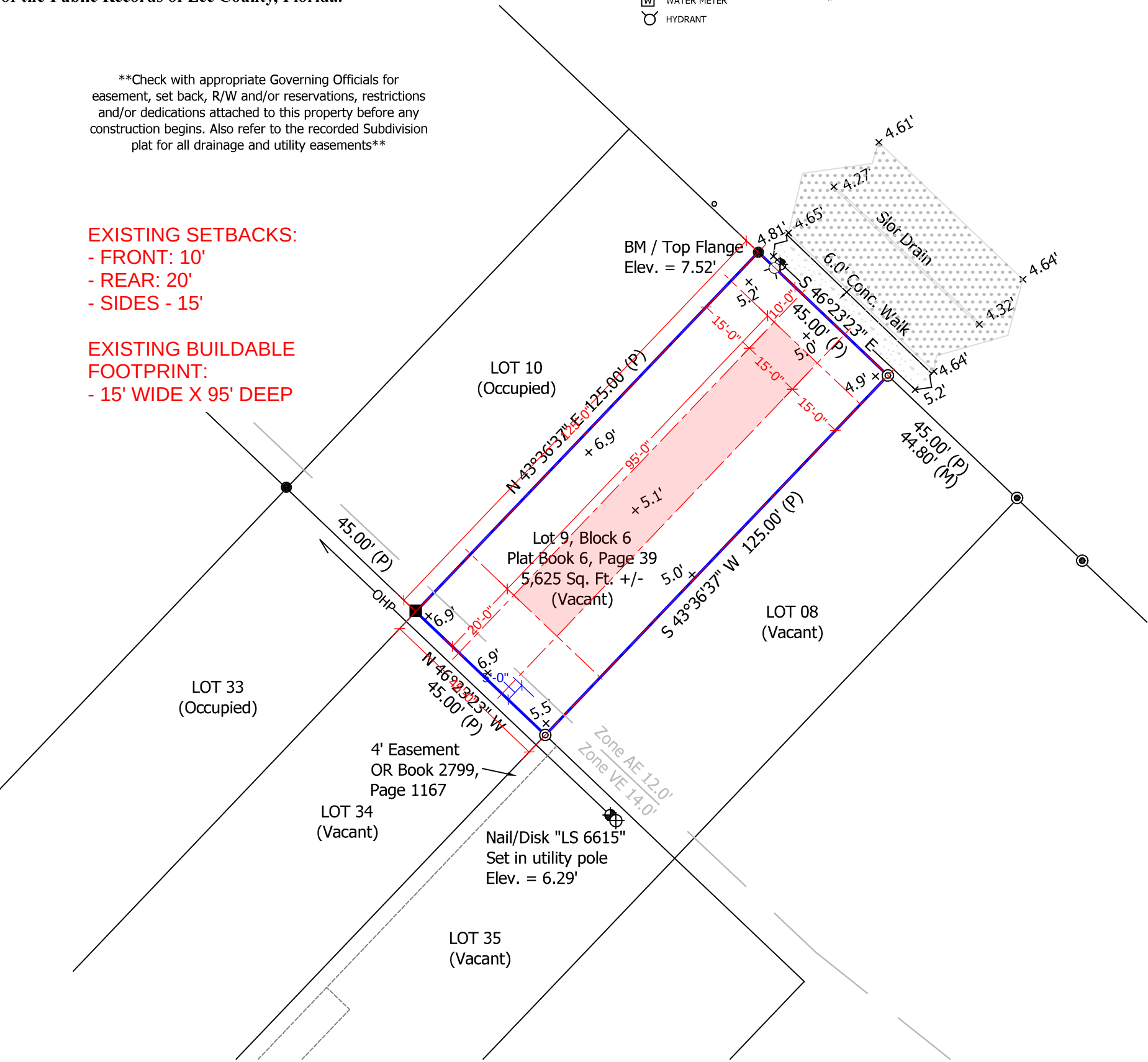
Instrument Number: 2022000136310
Lot 9, Block 6, Gulf Heights, according to the map or plat thereof, as recorded in Plat Book 6, Page 39, of the Public Records of Lee County, Florida.

Together with a non-exclusive easement for the benefit of the above described parcel as created by and set forth in that certain corrective and amended grant of ingress/egress easement by and between William G. Crane and Katheryn L. Crane and Robert A. Blazina and Blazina Investment Corporation recorded in official Records Book 2799, Page 1167, of the Public Records of Lee County, Florida.

Check with appropriate Governing Officials for easement, set back, R/W and/or reservations, restrictions and/or dedications attached to this property before any construction begins. Also refer to the recorded Subdivision plat for all drainage and utility easements

EXISTING SETBACKS:
- FRONT: 10'
- REAR: 20'
- SIDES - 15'

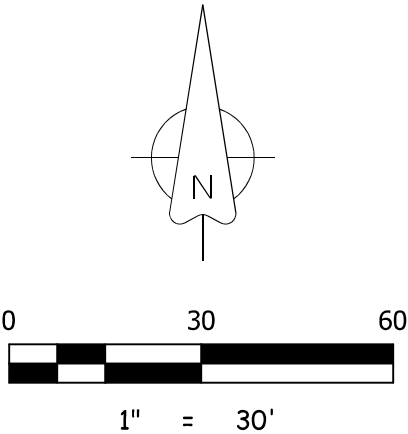
EXISTING BUILDABLE FOOTPRINT:
- 15' WIDE X 95' DEEP



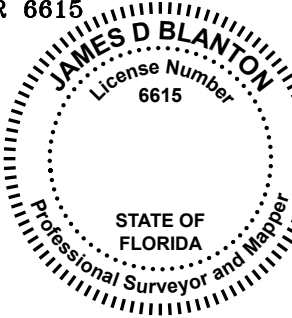
CERTIFIED TO:
Homebound Technologies Inc.

SURVEY NOTES:

- MEASUREMENTS SHOWN ARE IN FEET AND DECIMALS THEREOF.
- SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
- UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
- THIS PROPERTY IS LOCATED IN A FLOOD HAZARD AREA ON THE NATIONAL FLOOD INSURANCE PROGRAM'S FLOOD INSURANCE RATE MAPS.
NATIONAL FLOOD INSURANCE INFORMATION:
COMMUNITY NUMBER: 120673
PANEL NUMBER: 12071 C 0566
SUFFIX: G
EFFECTIVE DATE: 11/17/2022
FIRM ZONE: AE / VE
BASE FLOOD ELEVATION: 12.0' / 14.0'
- BEARINGS ARE BASED ON THE SOUTHERLY RIGHT OF WAY OF ESTERO BOULEVARD AS MONUMENTED IN THE FIELD, BEING S 46°23'23" E.
- DATE OF LAST FIELD WORK: JUNE 1ST, 2023.
- THIS BOUNDARY SURVEY WAS COMPLETED WITHOUT BENEFIT OF AN UP TO DATE TITLE COMMITMENT.
- ADDITIONS TO OR DELETIONS FROM SURVEY OR REPORTS BY OTHER THAN THE SIGNING SURVEYOR AND MAPPER ARE PROHIBITED BY LAW WITHOUT THE EXPRESS WRITTEN CONSENT OF THE SIGNING SURVEYOR AND MAPPER. *COPYRIGHT 2023, JAMES D. BLANTON, PSM, ALL RIGHTS RESERVED.* DO NOT COPY WITHOUT THE WRITTEN CONSENT OF JAMES D. BLANTON, PSM.
- THIS SURVEY WAS PREPARED ONLY FOR THE CLIENTS AS NAMED HEREON AND NO THIRD OR OTHER PARTY CERTIFICATION IS EXPRESSED OR IMPLIED.



James D. Blanton
PROFESSIONAL SURVEYOR & MAPPER 6615
202 W 7th Street, Suite 113
London, Ky. 40741
Office (606) 260 - 8169



I hereby certify that this Boundary Survey of the hereon described property has been made under my direction, and to the best of my knowledge and belief, it is a true and accurate representation of a survey that meets the minimum technical standards set forth by the Florida Board of Professional Surveyors & Mappers in Chapter 5J-17 of the Florida Administrative Code, Pursuant to Section 472.027 Florida Statutes.

BENCHMARK DESCRIPTION	FDOT FPRN / NAVD 88 Datum	Drawn By: TRL	Project ID:(FMB) Gulf Heights Lot 9, Block 6 SECTION 33, TOWNSHIP 46S, RANGE 24E	FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6615 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED OR DIGITAL SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER
		Checked By: JDB		

5350 ESTERO BOULEVARD,
FORT MYERS BEACH, FLORIDA 33931

Strap # 33-46-24-W1-00206.0090

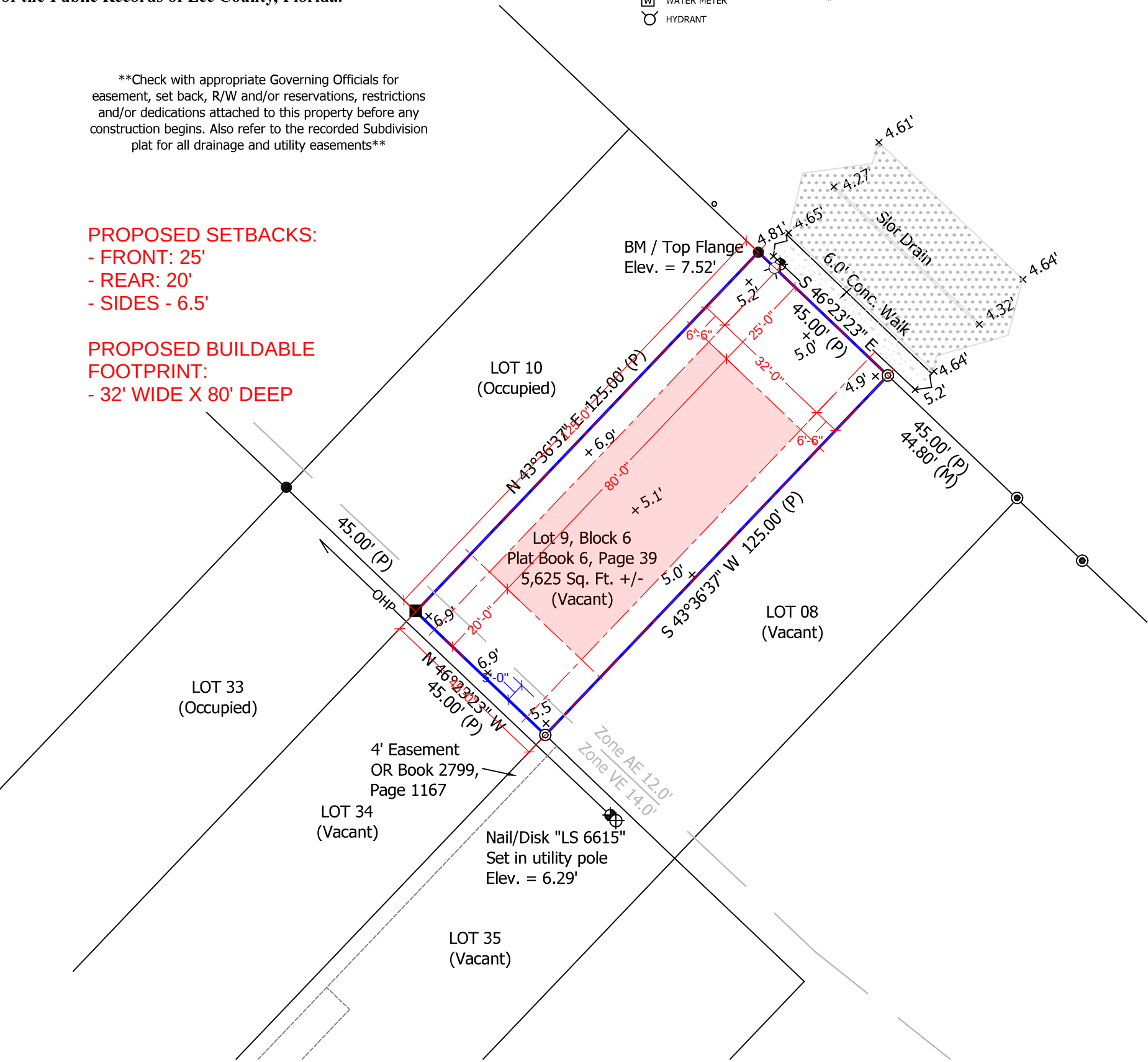
Instrument Number: 2022000136310
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Check with appropriate Governing Officials for easement, set back, R/W and/or reservations, restrictions and/or dedications attached to this property before any construction begins. Also refer to the recorded Subdivision plat for all drainage and utility easements

PROPOSED SETBACKS:
- FRONT: 25'
- REAR: 20'
- SIDES - 6.5'

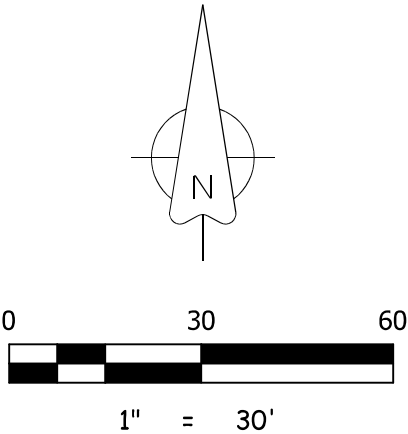
PROPOSED BUILDABLE FOOTPRINT:
- 32' WIDE X 80' DEEP



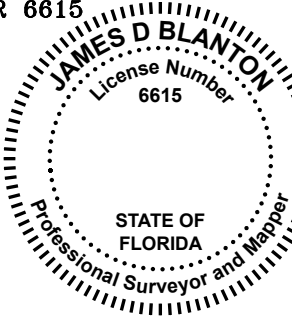
CERTIFIED TO:
Homebound Technologies Inc.

SURVEY NOTES:

- MEASUREMENTS SHOWN ARE IN FEET AND DECIMALS THEREOF.
- SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
- UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
- THIS PROPERTY IS LOCATED IN A FLOOD HAZARD AREA ON THE NATIONAL FLOOD INSURANCE PROGRAM'S FLOOD INSURANCE RATE MAPS.
NATIONAL FLOOD INSURANCE INFORMATION:
COMMUNITY NUMBER: 120673
PANEL NUMBER: 12071 C 0566
SUFFIX: G
EFFECTIVE DATE: 11/17/2022
FIRM ZONE: AE / VE
BASE FLOOD ELEVATION: 12.0' / 14.0'
- BEARINGS ARE BASED ON THE SOUTHERLY RIGHT OF WAY OF ESTERO BOULEVARD AS MONUMENTED IN THE FIELD, BEING S 46°23'23" E.
- DATE OF LAST FIELD WORK: JUNE 1ST, 2023.
- THIS BOUNDARY SURVEY WAS COMPLETED WITHOUT BENEFIT OF AN UP TO DATE TITLE COMMITMENT.
- ADDITIONS TO OR DELETIONS FROM SURVEY OR REPORTS BY OTHER THAN THE SIGNING SURVEYOR AND MAPPER ARE PROHIBITED BY LAW WITHOUT THE EXPRESS WRITTEN CONSENT OF THE SIGNING SURVEYOR AND MAPPER. *COPYRIGHT 2023, JAMES D. BLANTON, PSM, ALL RIGHTS RESERVED.* DO NOT COPY WITHOUT THE WRITTEN CONSENT OF JAMES D. BLANTON, PSM.
- THIS SURVEY WAS PREPARED ONLY FOR THE CLIENTS AS NAMED HEREON AND NO THIRD OR OTHER PARTY CERTIFICATION IS EXPRESSED OR IMPLIED.



James D. Blanton
PROFESSIONAL SURVEYOR & MAPPER 6615
202 W 7th Street, Suite 113
London, Ky. 40741
Office (606) 260 - 8169



I hereby certify that this Boundary Survey of the hereon described property has been made under my direction, and to the best of my knowledge and belief, it is a true and accurate representation of a survey that meets the minimum technical standards set forth by the Florida Board of Professional Surveyors & Mappers in Chapter 5J-17 of the Florida Administrative Code, Pursuant to Section 472.027 Florida Statutes.

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		Checked By: JDB		

LEGEND:			
	CONCRETE		ROOFED AREA
	EXISTING ELEVATION		SITE BOUNDARY
	DRAINAGE DIRECTION ARROW		FENCE
	POWER POLE		OVERHEAD LINE
	WATER VALVE		BUILDING LINE
	TELEPHONE RISER		EASEMENTS
	WATER METER		EDGE OF ROAD

SITE INFORMATION:	
PROPERTY ADDRESS:	
5350 ESTERO BLVD FORT MYERS BEACH, FL, 33931	
FLOOD ZONE INFORMATION:	
FIRM COMMUNITY NUMBER: 120673 PANEL: 0566 MAP NUMBER: 12071C0566G EFFECTIVE DATE: 11/17/2022 FLOOD ZONE: VE BFE: 14.00' NAVD MINIMUM ELEVATION OF BOTTOM OF LOWEST SUPPORTING HORIZONTAL STRUCTURE MEMBER OF LOWEST FLOOR = 15.00' NAVD 1988	
PARCEL LEGAL DESCRIPTION	
LOT 9, BLOCK 6, GULF HEIGHTS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 39 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.	
SETBACK PER LDC TABLE 34-3 CONVENTIONAL DEVELOPMENT DISTRICT	
FRONT 25 FT SIDE 6.5 FT REAR 20 FT	

CONTRACTOR TO BE RESPONSIBLE FOR ANY DAMAGE TO ROADWAYS
DONE BY THE PROPOSED DEVELOPMENT. IN AREAS WITH NEWER
PAVEMENT MAY REQUIRE INCLUDING MILL & REPLACE FULL LANE
WIDTH TO MEET F.D.O.T. STANDARDS. CONTRACTOR TO SOD ALL
DISTURBED AREAS DONE BY CONSTRUCTION.

LAND USE CALCULATIONS		
TOTAL PROPERTY AREA	5,625 SF	0.13 AC
BUILDING AREA	1,470 SF	26%
MISC IMPERVIOUS AREA	0 SF	0%
ON-SITE DRIVEWAY AREA	400 SF	7%
OFF-SITE DRIVEWAY AREA	32 SF	
STAIRS AREA	154 SF	3%
TOTAL ON-SITE IMPERVIOUS AREA	2,024 SF	36%
TOTAL ON-SITE PERVIOUS AREA	3,601 SF	64%

DRAINAGE CALCULATIONS	
VOLUME REQUIRED (1" OVER SITE)	469 CF
5.50' NAVD TOE	0 SF
6.00' NAVD TOB	1876 SF
DEPTH (h)	0.50'
VOLUME PROVIDED	469 CF

$$V = \frac{A_{TOB} + A_{TOE}}{2} * h$$

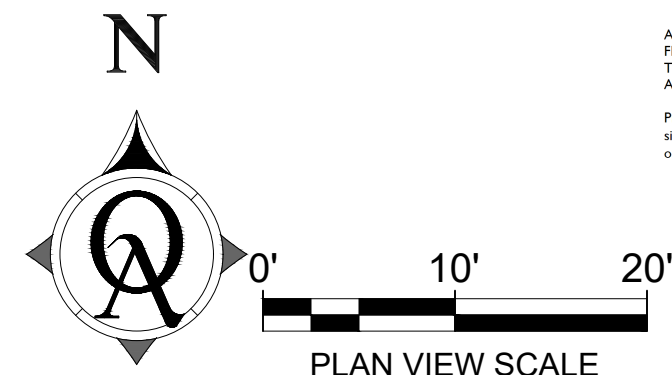
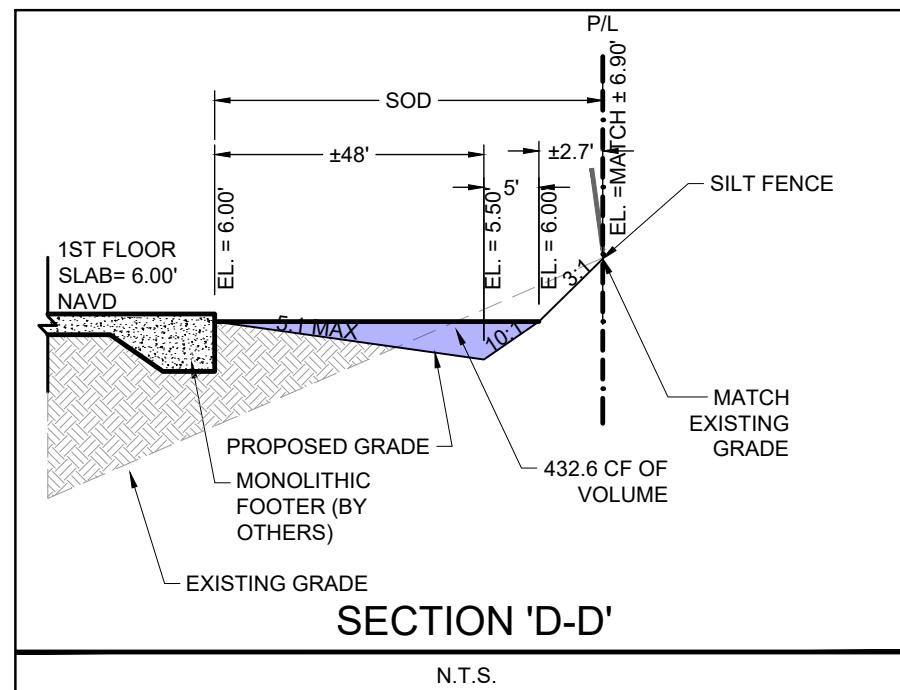
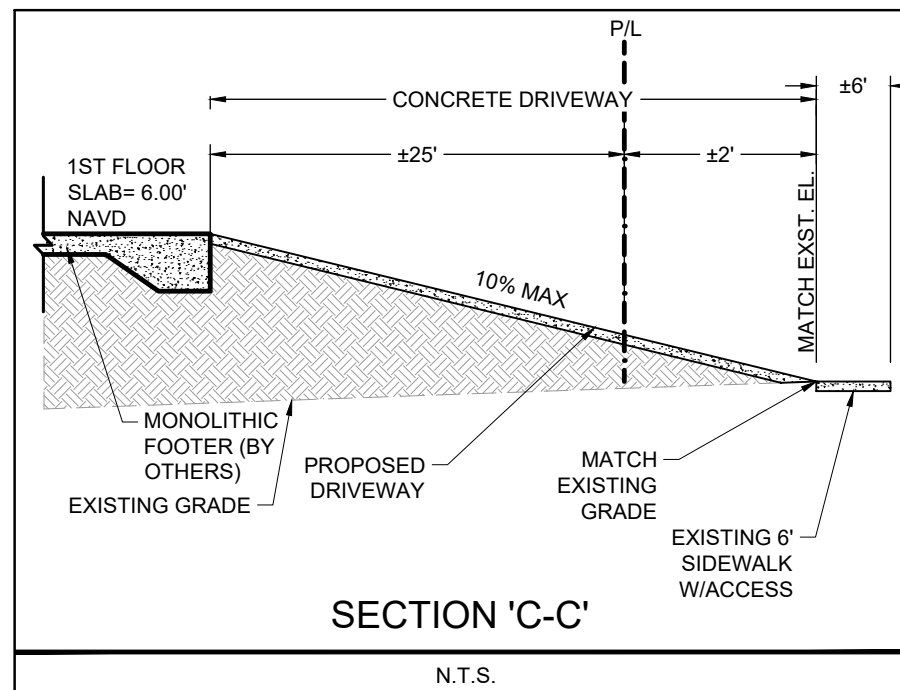
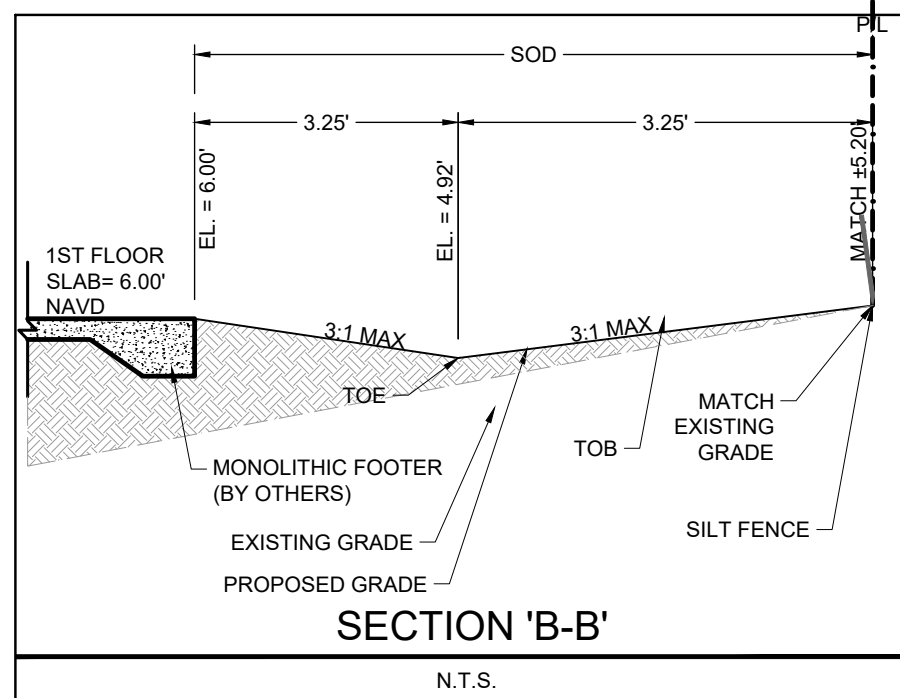
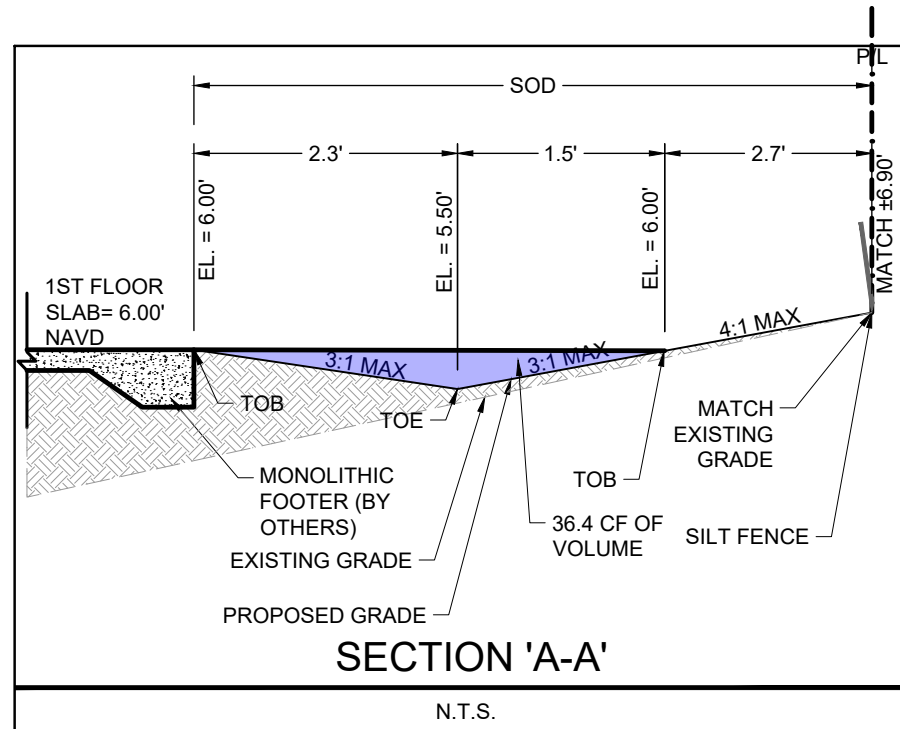
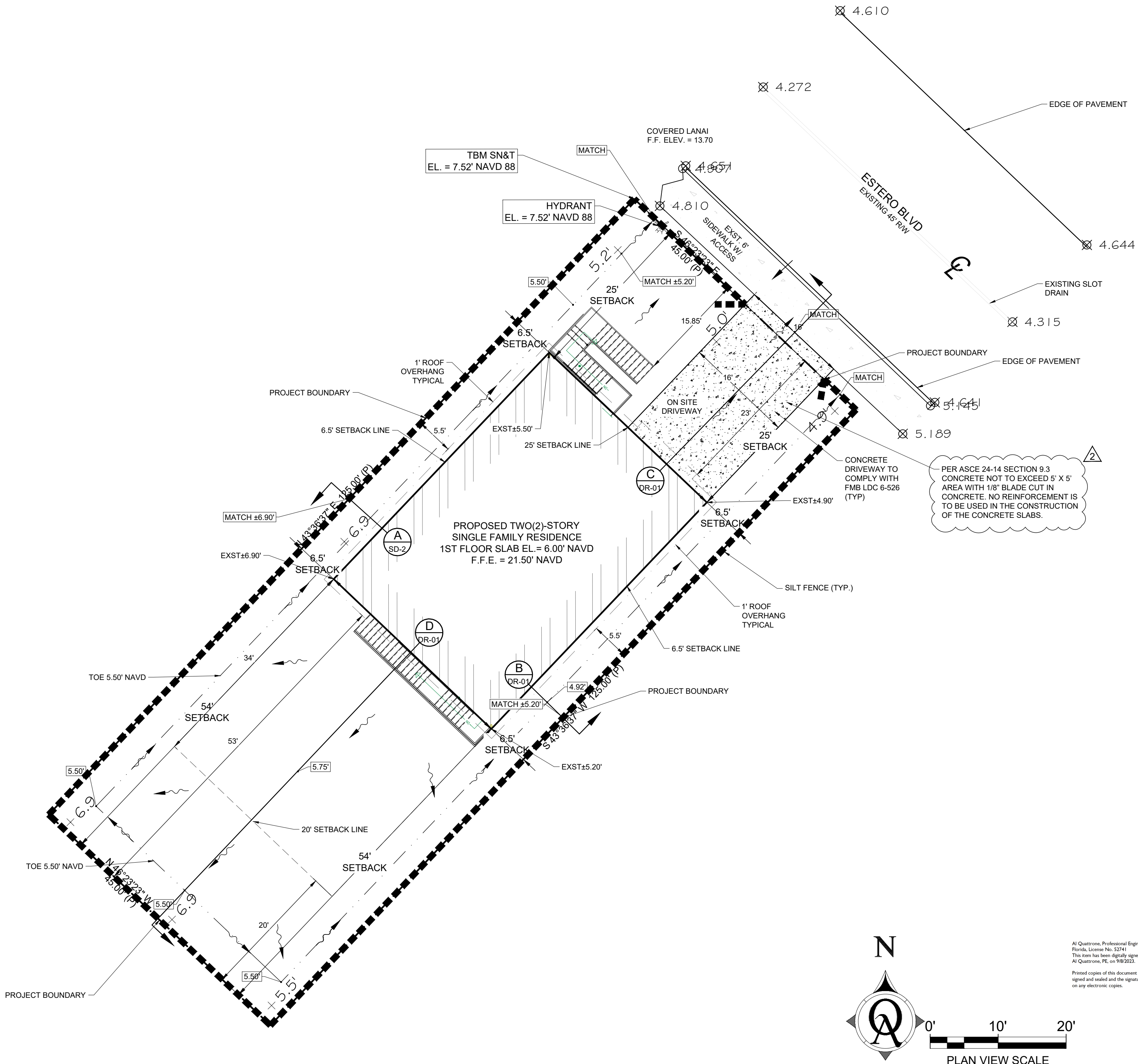
GEOTECHNICAL NOTES
1. FOLLOWING SITE STRIPPING AND PRIOR TO THE PLACEMENT OF
ANY FILL, AREAS OF SURFICIAL SAND (NOT EXPOSED LIMESTONE)
SHOULD BE COMPACTED ("PROOF ROLLED") AND TESTED. UES
RECOMMENDS USING A STEEL DRUM VIBRATORY ROLLER WITH
SUFFICIENT STATIC WEIGHT AND VIBRATORY IMPACT ENERGY TO
ACHIEVE THE REQUIRED COMPACTION. DENSITY TESTS SHOULD BE
PERFORMED ON THE PROOF ROLLED SURFACE AT A FREQUENCY OF
NOT LESS THAN ONE TEST PER 2,500 SQUARE FEET, OR A MINIMUM
OF FOUR (4) TESTS, WHICHEVER IS GREATER. AREAS OF EXPOSED
INTACT LIMESTONE SHALL BE VISUALLY CONFIRMED BY THE
PROJECT GEOTECHNICAL ENGINEER PRIOR TO FILL PLACEMENT, IN
LIEU OF PROOF ROLLING.

GEOTECHNICAL NOTES
2. FILL MATERIAL MAY THEN BE PLACED IN THE BUILDING PAD AS
REQUIRED. THE FILL MATERIAL SHOULD BE INORGANIC (CLASSIFIED
AS SP, SW, GP, GW, SP-SM, SW-SM, GW-GM, GP-GM) CONTAINING NOT
MORE THAN 5 PERCENT (BY WEIGHT) ORGANIC MATERIALS. FILL
MATERIALS WITH SILT-SIZE SOIL FINES IN EXCESS OF 12% SHOULD
NOT BE USED. FILL SHOULD BE PLACED IN LIFTS WITH A MAXIMUM
LIFT THICKNESS NOT EXCEEDING 12 INCHES. EACH LIFT SHOULD BE
COMPACTED AND TESTED PRIOR TO THE PLACEMENT OF THE NEXT
LIFT. DENSITY TESTS SHOULD BE PERFORMED WITHIN THE FILL AT A
FREQUENCY OF NOT LESS THAN ONE TEST PER 2,500 SQUARE FEET
PER LIFT IN THE BUILDING AREAS, OR A MINIMUM OF FOUR (4) TESTS
PER LIFT, WHICHEVER IS GREATER.

AVG. EXISTING GRADE=±5.50' NAVD
AVG. PROPOSED GRADE=±5.75' NAVD
AVG DEPTH OF FILL=±0.25'
VOLUME OF COMPACTED FILL NEEDED=±52 CY
VOLUME OF LOOSE FILL NEEDED=±68 CY (ASSUMING SWELL FACTOR
OF 1.3)

NOTE:
PER ASCE 24-14 SECTION 9.3 CONCRETE NOT TO EXCEED 5' X 5' AREA
WITH 1/8" BLADE CUT IN CONCRETE. NO REINFORCEMENT IS TO BE
USED IN THE CONSTRUCTION OF THE CONCRETE SLABS.

VERTICAL DATUM: NAVD
THIS DRAWING AND ALL ELEVATIONS SHOWN ARE BASED ON THE NATIONAL AMERICAN VERTICAL DATUM (NAVD 88) *ADD 1.2' TO CONVERT TO NGVD 29*



At Quattrone, Professional Engineer, State of
Florida, License No. 52741
This form has been digitally signed and sealed by
At Quattrone, P.E. on 9/8/2023.

Printed copies of this document are not considered
signed and sealed and the signature must be verified
on any electronic copies.

HOMEBOUND
DRAINAGE SITE PLAN

5350 ESTERO BLVD
FORT MYERS BEACH, FL, 33931

Quattrone & Associates, Inc.
Engineers, Planners, & Development Consultants
4301 Veronica Shoemaker Blvd - Fort Myers, Florida 33916 - 239-936-5222
Certificate of Authorization Number: 9465

ALFRED QUATTRONE, P.E.
FL REG #52741
VALID ONLY WITH EMBOSSED SEAL

SAVED BY: Josh
SAVED ON: 9/8/23

SHEET
DR-01
01 OF 01



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please check for meeting changes on our website WWW.FMBGOV.com.

TIME: 9 AM

DATE: January 8, 2023

CASE: VAR20230264

ADDRESS: 5350 Estero Blvd

APPLICANT: Maple Grove 89th Property LLC/ Drew Whiting

REQUEST: The applicant is requesting a variance of 8.5 feet from the LDC Table 34-3 which requires a 15 foot setback in the CR zoning district.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

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«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

1. **Requested Motion:**

Meeting Date: January 8, 2024

Acknowledge receipt of Council Member Veach's resignation on December 26, 2023, declare a vacancy on Town Council, and provide direction to the Town Manager and Town Attorney regarding next steps to fill the vacancy.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Per Sec. 4.08 of the Town Charter:

Filling of vacancies. A vacancy on the council, except for the position of mayor, shall be filled by appointment by majority vote of the council members remaining, and said appointment shall be effective until a successor is chosen at the next regular election. In the event that a majority of the members are removed by death, disability, law, or forfeiture of office, the governor shall appoint an interim council that shall call a special election to be held within 45 days following the occurrence of the vacancies to elect a new council. In the event that the mayor becomes unable to fulfill the duties of office, ceases to be qualified, or is removed from office as provided by law or this charter, the vice mayor shall assume the full powers and duties of the mayor. The vice mayor shall assume the office of mayor for the remainder of the unexpired term. The council vacancy thus created shall be filled by an interim appointment under the provisions of this charter, to be effective only until such time as the mayor resumes office or until the expiration of the term of the office, whichever occurs first.

Town Council has the discretion to fill the vacancy at an appropriate time. Pursuant to the Town Charter, the vacancy should be filled prior to the next regular election which will be held on November 5, 2024.

Any appointed person shall be required to file with the Florida Commission on Ethics a Full and Public Disclosure of Financial Interests (Form 6).

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Created/Initiated - 12/27/2023

Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 12/28/2023
Approved - 1/2/2024
Final Approval - 1/3/2024