



Fort Myers Beach Town Council

Bay Oaks Recreation Center

2731 Oak Street
Fort Myers Beach, FL 33931

Agenda

Monday, March 18, 2024

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER
- II. INVOCATION
- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF FINAL AGENDA
- V. PUBLIC COMMENT
- VI. PRESENTATIONS
 - A. Legislative Session Updates
- VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS
- VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS
- IX. APPROVAL OF MINUTES
 - A. Town Council - February 20, 2024
 - B. Town Council - March 4, 2024
 - C. Management & Planning Session - March 7, 2024
 - D. Town Council Joint Session with Public Safety Committee - March 7, 2024
- X. CONSENT AGENDA
 - A. Jacobs Project Management, Co Amendment #2
Authorize the Town Manager to execute Amendment #2 to the Jacobs Project Management Co Agreement.
 - B. STA #11 RFQ-20-22-AD; Land Development Code Updates
Approval of a Supplemental Task Authorization to update the Land Development Code (LDC) as required to make the LDC consistent with the proposed Comprehensive Plan.
- XI. ITEMS REMOVED FROM CONSENT AGENDA

XII. PUBLIC HEARINGS**A. Ordinance 24-03; Flood**

First Reading and Public Hearing of an ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE IV OF CHAPTER 6 OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH TO 1) REQUIRE ALL MANUFACTURED HOMES INSTALLED OR REPLACED IN SPECIAL FLOOD HAZARD AREAS TO BE ELEVATED AT OR ABOVE AT LEAST THE BASE FLOOD ELEVATION PLUS 1 FOOT; 2) ADOPT THE NOVEMBER 17, 2022 FLOOD INSURANCE STUDY FOR LEE COUNTY FLORIDA AND INCORPORATED AREAS; 3) CHANGE TO SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE DETERMINATIONS; AND 4) AMEND THE DEFINITIONS OF MARKET VALUE AND SUBSTANTIAL DAMAGE, IN ORDER TO COMPLY WITH RECENT CHANGES TO THE COMMUNITY RATING SYSTEM NECESSARY TO RETAIN A CLASS 8, WHICH ASSIST THE TOWN IN MAINTAINING ITS CLASS 5 COMMUNITY RATING SYSTEM DESIGNATION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on April 1, 2024 at 9:00 AM

B. Ord 24-05 DCI20230194, 3051 Estero Blvd

First Reading and Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 3051 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 29-46-24-W1-0120C.0100 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 April 1, 2024 at 9:00 AM

C. Ordinance 24-07, Natural Gas Franchise Agreement

First Reading and Public Hearing of and Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA GRANTING TO PEOPLES GAS SYSTEM, INC., ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE TOWN OF FORT MYERS BEACH FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; PROVIDING FOR FINDINGS; SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on April 1, 2024 at 9:00 AM

- D. Resolution 24-35; Six-Month Reassessment (The Whale)
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION AMENDMENT SEZ20230052, REQUESTING A SIX-MONTH REASSESSMENT OF PREVIOUSLY APPROVED AMENDMENTS TO ALLOW FOR OUTDOOR ALCOHOL SALES AND LIVE MUSIC; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- E. Resolution 24-42; SEZ20230280, 102 Estero Boulevard
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20230280 TO ALLOW RECONSTRUCTION OF A POOL, POOL DECK, FENCES AND WALLS, GRILL AREA, FOOT-RINSE STATION, LIGHTING, AND BEACH ACCESS PATH IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 102 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.
- F. Resolution 24-41; SEZ20230202 1028 First Street
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20230202, REQUESTING CONSUMPTION ON PREMISES TO ALLOW A BAR/COCKTAIL LOUNGE WITHIN 500 FEET OF A PARK, FOR THE PROPERTY LOCATED AT 1028 FIFTH STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- G. Resolution 24-40; SEZ20230293 - 923 Third Street
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20230293, REQUESTING A SPECIAL EXCEPTION FROM LDC 34-3238(2)(e)(4)(a). WHICH REQUIRES AN INCREASE TO THE NUMBER OF RESIDENTIAL BEDROOMS WHICH MAY BE DEVELOPED WHILE UTILIZING THE POST DISASTER BUILDBACK ORDINANCE, FOR THE PROPERTY LOCATED AT 923 THIRD STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

XIII. ADMINISTRATIVE AGENDA

- A. CDBG-DR Affordable Housing Development Evaluation Committee Selection
Selection of an individual to serve on the Lee County CDBG-DR Affordable Housing Development Evaluation Committee.
- B. Lien Reduction
Lien Reduction Request for CE18-0724
- C. Lien Reduction
Lien Reduction Request CE20-0597
- D. Lien Reduction
Lien Reduction Request for CE18-0700

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

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

Minutes

Tuesday, February 20, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the final agenda with items C. and D. pulled for discussion; seconded by Council Member Woodson.
The motion carried unanimously.

V. PUBLIC COMMENT

John McLean, resident, announced his candidacy for the open seat on the LPA (Local Planning Agency). He reviewed his experience and qualifications.

Eddie Rood, resident, commented that the three information signs in the CWA (Critical Wildlife Area) were destroyed during the hurricane and the FWC (Fish & Wildlife Conservation Commission) did not pay for replacements, but they supplied the artwork. Mr. Rood presented the new signs the non-profit Friends of Little Estero Island paid for.

Vice Mayor Atterholt read the information on one of the CWA signs.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Atterholt thanked residents and visitors for taking the time to walk over the pedestrian overpass at Margaritaville. He suggested law enforcement officers and volunteers encourage people waiting for traffic at that location to use the overpass.

Town Manager Hyatt announced that Nicole Berzin was the new public information officer. Ms. Berzin reviewed her background and was very excited about the opportunity.

No items from other members.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Joy Sullivan, BORCAB (Bay Oaks Recreation Campus Advisory Board) member, provided an update on activities open at Bay Oaks. The newsletter was full of information for residents. She noted that the pickleball tournament was on March 16, 2024. She displayed a small towel made for the tournament and indicated that they were looking for additional people to sign up. Details can be found on [FMBcommunityfoundation.com](https://fmbcommunityfoundation.com), Facebook and Beach Talk Radio's website. She added that there was a morning session for beginners and an afternoon session for more advanced players. Ms. Sullivan reported that the residents would like to see some progress on the pool. She indicated that the open dirt area could be pickleball courts or a multi-use field, and the beach access areas were reimagined to embrace active lifestyles by adding calisthenic equipment, bike racks, and play structures for children. BORCAB requested another strategic planning session to help move forward after Hurricane Ian.

VIII. APPROVAL OF MINUTES**A. Town Council - February 5, 2024**

The vote results for Ordinance 24-01 should read: The motion carried 3-0 by roll call vote, with Mayor Allers abstaining.

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

The motion carried unanimously.

IX. ADMINISTRATION OF THE OATH OF OFFICE**A. Oath of Office****Seat #5 (Safford)**

Jackie Liszak read the oath of office to swear in Scott Safford for the Town Council seat.

X. CONSENT AGENDA

Vice Mayor Atterholt moved to approve the remainder of the consent agenda; seconded by Council Member Woodson.

The motion carried unanimously.

A. Resolution 24-36: CDBG-DR Program Applications

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR, TOWN MANAGER, OR A DESIGNEE THEREOF TO APPLY FOR AND ADMINISTER A GRANT FROM THE LEE COUNTY CDBG-DR RECOVERY AND RESILIENCY PLANNING PROGRAM FOR COMPREHENSIVE PLANNING EFFORTS; AUTHORIZING THE MAYOR, TOWN MANAGER, OR DESIGNEE TO EXECUTE RELATED DOCUMENTS AND FOR RELATED PURPOSES; PROVIDING AN EFFECTIVE DATE.

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

The motion carried unanimously.

B. Resolution 24-37: FDEM LAP Grant for Sea Turtle Lighting

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING A \$7,766,387 AMENDED LAP GRANT AGREEMENT WITH THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR THE PURCHASE AND INSTALLATION OF SEA TURTLE LIGHTS ON ESTERO BOULEVARD; AUTHORIZING A RELATED BUDGET ADJUSTMENT; AND PROVIDING AN EFFECTIVE DATE.

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

The motion carried unanimously.

C. 24-38 Resolution: Ratifying FP&L Sea Turtle Lighting Contract

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH FPL ENERGY SERVICES, INC. TO INSTALL ISLAND-WIDE SEA TURTLE FRIENDLY STREET LIGHTING IN THE AMOUNT OF \$7,766,387; AND PROVIDING FOR AN EFFECTIVE DATE

See XI.

D. Resolution 24-39, Budget Amendment for Beach Renourishment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING BUDGET AMENDMENT FOR BEACH RENOURISHMENT; EFFECTIVE DATE.

See XI.

E. FY 2024 TDC Request

Authorize the Town Manager to apply for Tourist Development Council Grants in Fiscal Year 2024 for beach and shoreline maintenance and related projects; and providing an effective date.

Vice Mayor Atterholt moved to authorize; seconded by Council Member Woodson.

The motion carried unanimously.

F. Surplus Items

Declare listed items as surplus and authorize staff to dispose of these items utilizing a municipal government auction service.

Vice Mayor Atterholt moved to authorize; seconded by Council Member Woodson.

The motion carried unanimously.

G. Special Event - Pickleball Tournament

Use of Bay Oaks for Pickleball Tournament

Vice Mayor Atterholt moved to authorize the use of Bay Oaks; seconded by Council Member Woodson.

The motion carried unanimously.

H. FMB Non-Exclusive Right of Way Agreements

Authorize the Mayor to execute two Non-Exclusive Right of Way Agreements with the Fort Myers Beach Chamber of Commerce and Bandes Construction Company, Inc.

Vice Mayor Atterholt moved to authorize; seconded by Council Member Woodson.

The motion carried unanimously.

XI. ITEMS REMOVED FROM CONSENT AGENDA

Item C. - Vice Mayor Atterholt asked Town Manager Hyatt to review the scope of work for Florida Power & Light (FP&L) to help residents understand the agreement. Town Manager Hyatt described the details of the project as stated on the blue sheet.

Vice Mayor Atterholt moved to approve the resolution; seconded by Mayor Allers. The motion carried unanimously.

Item D. - Environmental Projects Manager Chadd Chustz explained the project and the infusion of cash as stated on the blue sheet.

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

The motion carried unanimously.

XII. ADMINISTRATIVE AGENDA

A. CDBG-DR Planning & Infrastructure Evaluation Committee Appointment

Provide staff with direction on appointing a citizen to the CDBG-DR Planning & Infrastructure Evaluation Committee to represent the Town of Fort Myers Beach.

Operations and Compliance Director Frankie Kropocek explained that the town was looking for a resident with specific experience. He noted that the person could not be an employee of the county or the municipalities or serve on any committee. Applications were due on March 1, 2024, and Town Manager Hyatt was contacting the county for information regarding the reason for the urgency. Mayor Allers questioned whether the town manager could appoint someone or whether the town council had to schedule a special meeting. Town Attorney Vose suggested they plan a special meeting; however, she will explore specifics for authorizing the town manager to appoint a citizen. Town Attorney Vose analyzed the documents during a short recess. Town Attorney Vose stated that the town manager could appoint a citizen and a meeting could be scheduled for February 27, 2024.

She revealed that the appointed citizen could be a member of an advisory board or the LPA as long as they were not an employee of the town or an elected official. She noted an evaluation process was provided.

Town Manager Hyatt commented that he did not know many people who could qualify since he was so new to the community. Vice Mayor Atterholt was comfortable giving Town Manager Hyatt the authority to make the final decision based on suggestions from council members.

Mayor Allers moved to approve the town manager making the appointment at an 8:45 meeting on February 27, 2024, to fill the position; seconded by Vice Mayor Atterholt.

The motion carried unanimously.

B. MPO Citizen Advisory Committee

Provide staff with direction to seek a community member to represent the Town of Fort Myers Beach

Council Member King moved to approve giving direction to staff; seconded by Vice Mayor Atterholt.

The motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt responded to BORCAB Member Sullivan and stated the town had a \$1 million grant towards the ballpark and changes would make that grant null and void. The plan was to move into the new trailers on March 2, 2024, and he will keep the council updated. He described the layout of the offices.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford thanked members and stated he was committed to doing his best job for the community.

Council Member Woodson noted that Resilient Lee was meeting this Friday to approve the overall town plan. She planned on voting for approval unless she heard objections. There were no objections. She attended the TDC (Tourist Development Committee) and presented the proposal for the new pier, which was well received. She sent a letter to Commissioner Pendergrass and requested that she be added to the county commissioner's next agenda to discuss the pier. If the topic is on the agenda, she asked that the community submit public comments of support. Mayor Allers felt that focusing on the TDC first made more sense since the funds came from the TDC and the county had recently hired a design firm.

Council Member Woodson commented that two county commissions advised her to get on the agenda. She described some details of the proposed pier and an alternative plan to extend the length.

Vice Mayor Atterholt suggested implementing a fast-tracking procedure for approving items that were not very controversial. He requested that the town attorney create a process to add items with unanimous votes from the LPA to the consent agenda unless a council member or resident objected. He described how the process could help make the town council more efficient. Council Member Safford supported the idea. Town Attorney Vose noted that many municipalities

allowed the LPA to grant variances with unanimous votes. Vice Mayor Atterholt felt that council members should have an opportunity to slow down the process by a week or two just in case unforeseen negative feedback was discovered. Mayor Allers was concerned about not giving the community due process, especially if they could not attend the LPA meeting. Town Attorney Vose described a procedure to include an opportunity for appeals during a specific timeframe. She will draft an ordinance to discuss at the next M&P Session. Council Member King questioned whether the staff could be authorized to approve specific actions and whether the appeal process could go to the LPA and town council. Vice Mayor Atterholt felt it was a great idea but a separate issue. Council members agreed. Council Member King questioned revisiting liaison duties with advisory committees. Mayor Allers suggested adding the item to an agenda. Mayor Allers requested permission to direct staff to research whether the Times Square road was vacated. He noted that it was part of why they were not getting TDC funds for the area. Town Attorney Vose will research the issue.

XVII. ADJOURNMENT

Council Member King moved to adjourn; seconded by Vice Mayor Atterholt. The motion carried unanimously.

The meeting was adjourned at 10:47 a.m.



Fort Myers Beach Town Council

**Town Hall
2731 Oak Street
Fort Myers Beach, FL 33931**

Minutes

Monday, March 4, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Vice Mayor Atterholt moved to approve the final agenda with items C. D. and G. pulled for discussion; seconded by Council Member King.
The motion carried unanimously.

V. PUBLIC COMMENT

Rebecca Link read a letter of support for John McLean to fill the position on the LPA (Local Planning Agency).

Christy Thorton proposed a business idea to provide golf carts for transportation, a water taxi from San Carlos Island to the beach and provide cars and e-bikes for rent. She submitted her information to the town manager.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked the staff for all their hard work getting the trailers onsite. He thanked everyone for their kind words and for taking care of him.

Vice Mayor Atterholt thanked those who were using the pedestrian overpass. Operations and Compliance Director Frankie Kropocek explained how the permitting situation had improved. Vice Mayor Atterholt thanked all those who helped turn the permitting situation around.

Council Member Woodson recognized the Gala at Lovers Key and thanked everyone for raising \$290,000.00. She thanked everyone who attended the

concert to benefit the Woman's Club.

Council Member Safford recognized Council Member King for attending the meeting after his recent hip surgery. He thanked all the businesses for pulling together to hold the Shrimp Fest.

Mayor Allers thanked Lee County and the staff for working with the town to open Crescent Park. He thanked the staff for their work with the trailers and recognized Town Clerk Baker for moving 12 times since Ian while running a municipality.

A. Proclamation: Flood Awareness Week

Mayor Allers read the proclamation.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

A. Public Safety Committee (PSC) - Chair Dawn Thomas

Chair Thomas requested a joint meeting to discuss issues and provide direction with priorities. She described a couple of items they were working on. The Town Council suggested meeting on March 7, 2024, after the M&P session.

B. Local Planning Agency (LPA) - Chair Cereceda

Chair Cereceda stated that they had to start thinking about what temporary business permits were doing to the big picture of redevelopment in the town. She described the ordinance that allowed existing businesses to operate on their property until their building was completed. Another town ordinance prohibited mobile vendors from operating in the community temporarily or permanently. The LPA hoped that the town council would discuss an end-game. Mayor Allers suggested they needed to determine an end date. Chair Cereceda discussed how SB250 applied relative to land use and permits regarding commercial entities. Council Member Woodson added that the intent was to allow pre-existing businesses to operate temporarily while rebuilding. The LPA recommended encouraging businesses to rebuild their property, but mobile vendors were prohibited. Chair Cereceda suggested that they not let the big redevelopment picture be sidetracked by allowing more mobile businesses in the town that were not there before the hurricane. Council Member Woodson stated that new businesses were not prohibited, but new businesses had to be brick-and-mortar. Vice Mayor Atterholt indicated the current ordinance was inadequate, poorly drafted and needed to reflect legitimate concerns. He questioned what they could do legally.

Town Attorney Vose agreed the ordinance required work and will research amending it. Council Member Safford mentioned rezoning to allow new businesses to operate within a deadline. Chair Cereceda stated that the town must be clear regarding what would be permitted.

Discussion was held regarding what to allow on properties that were not going to rebuild or allow businesses to operate temporarily until they could obtain a lease or buy property.

C. Local Planning Agency Appointment

Appoint a member to the FY2023-2024 Local Planning Agency (LPA) to fill a vacancy on the board.

John McLean received four votes to fill the vacancy on the LPA.

D. Advisory Boards

Designation of a Council representative to the six Town advisory boards/committees.

AAC - Vice Mayor Atterholt

Audit - Council Member Safford

BORCAB - Council Member Woodson

CELCAB - Vice Mayor Atterholt

MERTF - Council Member King

PSC - Mayor Allers

E. Outside Committees

Designation of a Council representative and alternate to the seven outside committees on which Council members have previously served.

Coastal and Heartland National Estuary Partnership Policy Committee - Environmental Projects Manager Chadd Chustz.

Mayor Allers moved to keep Chadd Chustz as the designated representative on the committee; seconded by Council Member King.

The motion carried unanimously.

Coastal Advisory Committee - Chadd Chustz.

Mayor Allers moved to keep Chadd Chustz as the designated representative on the committee; seconded by Council Member King.

The motion carried unanimously.

Fort Myers Beach Elementary School Youth Council - Mayor Allers.

Horizon Council - Council Member Woodson.

Mayor Allers moved to approve Council Member Woodson to continue being the representative for the Horizon Council; seconded by Council Member Safford.

The motion carried unanimously.

The Metropolitan Planning Organization - Council Member King.

Mayor Allers moved to approve Council Member King as the representative for the MPO; seconded by Vice Mayor Atterholt.

The motion carried unanimously.

Southwest Florida Regional Planning Council - Community Development Planner Sarah Propst.

Mayor Allers moved to approve Planner Sarah Propst as a representative for the council; seconded by Council Member Woodson.

The motion carried unanimously.

South Florida Resiliency Coalition - Culture, Parks & Recreation Director Jeff Hauge.

Mayor Allers moved to approve Director Hauge as a representative for the coalition; seconded by Council Member Woodson.

The motion carried unanimously.

Tourist Development Council - Mayor Allers.

Vice Mayor Atterholt moved to approve Mayor Allers as a representative on the TDC; seconded by Council Member Woodson.
The motion carried unanimously.

VIII. APPROVAL OF MINUTES

- A. Management & Planning Session - February 15, 2024
Council Member King moved to approve the minutes; seconded by Mayor Allers.
The motion carried unanimously.
- B. Town Council Special Meeting - February 15, 2024
Amend IV. to read: She noted there was also pending ~~litigation~~ legislation in the Florida legislature concerning increasing the millage rate, requiring a vote of at least 2/3 of the membership.
Council Member King moved to approve the amended minutes; seconded by Mayor Allers.
The motion carried unanimously.

IX. CONSENT AGENDA

Council Member King moved to approve the consent agenda; seconded by Council Member Woodson.
The motion carried unanimously.

- A. Resolutions 24-43 through 24-46; Extending State of Local 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.
Council Member King moved to approve the resolution; seconded by Council Member Woodson.
The motion carried unanimously.
- B. Resolutions 24-47 through 24-50; Extending State of Local 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.

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

The motion carried unanimously.

C. Vetor Settlement Agreement

Motion to approve a settlement agreement with Vetor Contracting Services LLC in the amount of \$225,000 related to disputed billing and work performed following Hurricane Ian.

Mayor Allers read the motion and noted the discussion also addressed item D. Town Attorney Vose described the agreement and stated the town did owe money to Vetor Contracting Services LLC. Funds received from Mr. Persaud would cover the agreement costs. Town Attorney Vose explained why she would not use the same language as in the contract. Council Member Woodson suggested conducting a forensic audit. Director Kropocek stated that they were going through paperwork and would address issues as soon as they came up. Vice Mayor Atterholt questioned whether the current audit firm could handle a forensic audit. Director Onzick indicated that an outside entity should do it to avoid a conflict of interest. He added that he had not seen anything to cause him concern.

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

The motion carried unanimously.

D. Resolution 24-54; Vetor Budget Amendment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A BUDGET AMENDMENT IN THE AMOUNT OF \$225,000 FOR PAYMENT OF A SETTLEMENT OF A BILLING DISPUTE UNDER THE PROMPT PAYMENT ACT FOR HURRICANE RELIEF WORK PERFORMED BY VETOR CONTRACTING SERVICES, LLC; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution.

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

The motion carried unanimously.

E. 24-51, Authorizing \$1,000,000 ARPA Funds to Match FDEP Grant For Bay Oaks Recreational Campus

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE USE OF \$1,000,000 OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS TO MATCH A \$1,000,000 GRANT FROM FDEP FOR THE BAY OAKS CAMPUS REDEVELOPMENT PROJECT, AND RELATED BUDGET ADJUSTMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

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

The motion carried unanimously.

F. Resolution 24-52; Town Hall Internet Ratification

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN MANAGER ON FEBRUARY 27, 2024, TO WAIVE THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND TO APPROVE A PURCHASE ORDER FROM SOFTRIM LLC FOR EQUIPMENT AND INSTALLATION OF INTERNET SERVICE FOR THE TOWN HALL MODULAR UNITS AT THE BAY OAKS RECREATION CAMPUS IN AN AMOUNT NOT TO EXCEED \$36,036.66 AS AN EMERGENCY PURCHASE; AND PROVIDING AN EFFECTIVE DATE.

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

The motion carried unanimously.

G. Resolution 24-55; Professional Services for Marina Booster Pump Station

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SUPPLEMENTAL TASK AUTHORIZATION TETRA TECH, INC. NOT TO EXCEED \$68,830 FOR WATER UTILITIES FOR MARINA BOOSTER PUMP STATION REHABILITATION.

Mayor Allers read the title of the resolution. Council Member King requested an explanation for the public. Public Works and Utilities Director Mark Ashton explained that the pump had to be fixed due to damage by Ian.

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

The motion carried unanimously.

X. PUBLIC HEARINGS

Town Attorney Vose explained the public hearing process. Town Clerk Baker confirmed that all agenda items were properly advertised. She swore in those providing testimony.

A. 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

Mayor Allers read the title of the resolution. Ex parte communications:

Council Member King - received emails from the applicant and neighbor but did not take a tour; Vice Mayor Atterholt, Mayor Allers and Council Members Woodson and Safford - received emails from the applicant and the neighbor and toured the property. The property owner confirmed receipt of the agenda and backup materials.

Community Development Planner Sarah Propst reviewed the background of the request as stated on the blue sheet. She noted the LPA recommended approval by a 5-2 vote. She answered questions surrounding the staff report and the application. She indicated that the application was not incorrect, but some details were missing. Planner Propst reviewed de minimus components.

Attorney Robert Burandt represented the applicants and stated he prepared the application without including the elevated pool, but he assumed that town staff were aware they were requesting an elevated pool when they met to review site plans. He noted that water had intruded on the property twice since Ian and the applicants did not want to worry about an inground pool flooding. He described the pool design and the improved view from the neighbor's house with a landscape buffer.

Kelly Moore, applicant, apologized for taking up so much time with the issue. She utilized PowerPoint for her presentation. Slides included an aerial of the neighborhood, a timeline of activities since purchasing the property in 2021 and a Plaisted Pool Proposal. She addressed the two LPA votes against the recommendation and corrected misconceptions regarding their plans. She thanked the town council for visiting their home and hoped they would approve their request.

Vice Mayor Atterholt questioned whether the town council was allowed to consider what the neighbors might be able to see if they chose not to rent the home that abuts the property they are actually on. Town Attorney Vose replied that it was subjective to each person. Applicant Todd Plaisted explained why an inground pool would not work on their property. He stated there would not be a fire component in their design and they were flexible regarding the landscape buffer.

Public comment:

Attorney Sarah Spector from Roetzel & Andress represented the neighbor and distributed documents. She addressed what she described as deficiencies and inaccuracies in the application. She requested that they deny the request.

Steven Schawls, surveyor, distributed a site plan.

Council Member King moved to accept Mr. Shoals as an expert surveyor; seconded by Council Member Safford.

The motion carried unanimously.

Mr. Schawls stated the parcel was in a velocity zone 12 and explained why he was unsure that the survey was done properly. He questioned how they came up with the square footage of the parcel when it did not appear that a portion of the property was shown on the subdivision plat. Scott Simmons, appraiser, noted that the neighbor requested a value impact study to

document potential damages to his property due to the proposed construction. He did not have time to conduct a full survey but shared a preliminary analysis. He described some adverse value impacts due to altered view corridors, lack of privacy and property access.

Judy Haataja, TriPower Vacation Rentals, distributed a handout and stated the other elevated pool in the neighborhood was on the water side and not between the neighbors. She understood that the pool would be elevated 8.5 feet and a cage would go up to the top of the house. Other items in the pool area included a fountain, spa/hot tub and an outdoor kitchen. She indicated the pool was elevated because the applicants did not want to go downstairs to access the pool. She felt it was too invasive for the neighbor and there would be too much noise.

Stephen Himmelstein, the neighbor's son, was concerned about how the application would affect his family's property. He distributed a packet of information and discussed how the staff reports changed.

Jeff Walker distributed handouts and discussed how the proposed pool would affect the traffic pattern and parking in the area.

Donna Pelligrini Alderman, resident, described her relationship with the Himmelstein's and noted they would be full-time residents soon. She felt the applicants' request was selfish and disrespectful of the neighbors and the town. She did not support making concessions for personal preferences.

Stephanie Himmelstein, neighbor, stated that the applicants did not work with them regarding the proposed pool. She noted the applicant did not entertain any compromise and would not answer their questions. She described amenities in the proposed project. She agreed that Ms. Moore mentioned two compromises regarding landscape and a cantilevered deck, but Mrs. Himmelstein did not ask for those compromises. She requested that the council deny their request.

Larry Himmelstein, Robert Himmelstein's father, did not support the applicant's request. He indicated that the applicants were unwilling to compromise and asked that the council deny the requests.

Dorothy Himmelstein, Robert Himmelstein's mother, reviewed how long they had been on the beach. She described her son's furniture business and was excited for her son to move to the town permanently.

Robert Himmelstein, neighbor, distributed pictures from an architect to show the proposed pool and addition. He asked that the application be denied and stated that the application required approval from the HOA (Homeowners Association). He described the contents of his handouts and conversations he had with several different people.

Steven Brockman, engineer, reviewed his experience.

Council Member Woodson moved to accept Mr. Brockman as an expert in his field; seconded by Council Member Stafford.

The motion carried unanimously.

Mr. Brockman questioned the elevation of the deck and stated that the height of the pool would not be at the elevation of the finished floor on the first level. He described construction requirements in a velocity zone 12.

Public comment closed.

Attorney Burandt noted that most comments were irrelevant to the variance requests. He repeated why an inground pool would not work on the property and disputed many comments and opinions. He indicated it was a de minimus request and that the HOA had approved the proposed pool. Attorney Burandt stated that he spoke to the neighbors for 30 minutes after the LPA meeting and their compromise was for the applicants to install an inground pool and nothing else.

Planner Propst stated that the applicants did not try to hide anything regarding their application. She described sections of code addressing an elevated pool and a non-seawall water body. She noted that the request was for an elevated pool and a screen enclosure without mentioning flood code requirements or the height of the structure. She indicated that an elevation condition was an option but did not know if it would be beneficial.

Council Member Safford was concerned about the VE zone portion but supported the setback request. He noted that Planner Propst addressed his other issues.

Planner Propst stated that the applicants would only have to come back before the council if they proposed a pool with different setbacks unless a height condition was added. Council Member Woodson noted they were not looking at flood plain issues and did not support adding a condition. She agreed that was the only place a pool could be located on the property.

Vice Mayor Atterholt thought the burden was on the applicant and the request was not hurricane-related. He did not believe it was a de minimus request and had difficulty supporting it.

Mayor Allers did not know how they could build a pool anywhere else on the property and trees could block the view from the neighbor. He agreed with the staff report.

Council Member Woodson moved to approve the variance requests with conditions; seconded by Council Member King.

Mayor Allers supported adding a condition on height and a condition to stage construction equipment offsite.

Planner Propst noted that they might want a condition to change the landscape plan to something that would be agreeable to the applicant and the neighbor.

Council Member Woodson amended her motion for approval to add conditions addressing the landscape plan, offsite staging, and if the pool was higher than proposed, they would have to come back before the council; seconded by Council Member King.

The motion carried 4-1 by roll call vote, with Vice Mayor Atterholt dissenting.

B. Resolution 24-53; VAR20230288, 8069 Estero Boulevard

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230288, REQUESTING A VARIANCE FROM LDC 34-638(D)(1)G. WHICH REQUIRES NEW AT-

GRADE MECHANICAL EQUIPMENT TO NOT ENCROACH INTO A SIDE YARD SETBACK AND TO BE LOCATED ON THE SIDE OF THE PROPERTY WITH THE LARGER SETBACK, WHERE THERE ARE DIFFERING SIDE SETBACK WIDTHS, FOR THE PROPERTY LOCATED AT 8069 ESTERO BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed. The property owner confirmed receipt of the agenda and backup materials.

Planner Propst reviewed the background of the request as stated on the blue sheet. She indicated the LPA recommended approval.

Valerie Harris, applicant, explained that they installed their pool right before Ian, but it was not inspected before the hurricane. After Ian, the pool, equipment, deck and pavers had to be redone. The inspector refused approval because he said the pool equipment was on the wrong side of the house. Ms. Harris stated her neighbor nearest to the equipment sent a letter in support of leaving it where it was.

No public comment.

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

The motion carried unanimously by roll call vote.

C. Resolution 24-20; VAR20230284, 65 Flamingo Street

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230284, REQUESTING A VARIANCE FROM TABLE 34-3 PRINCIPAL STRUCTURE SETBACKS, TO DECREASE THE FRONT STREET SETBACK BY 10 FEET AND DECREASE THE REAR SETBACK BY 15 FEET AND DECREASE THE REAR STREET SETBACK BY 15 FEET, TO ALLOW A NEW SINGLE FAMILY HOME FOR THE PROPERTY AT 65 FLAMINGO STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed except for Vice Mayor Atterholt, who indicated he received a phone call a few weeks ago from a neighbor who expressed concerns about the request. He noted the conversation had no bearing on his vote.

James Ink, engineer, reviewed his background and experience.

Vice Mayor Atterholt moved to accept Mr. Ink as an expert in his field; seconded by Council Member Woodson.

The motion carried unanimously.

Albert Dambrose, architect, reviewed his background and experience.

Vice Mayor Atterholt moved to accept Mr. Dambrose as an expert in his field;

seconded by Council Member Woodson.

The motion carried unanimously.

Planner Propst reviewed the background of the request as stated on the blue sheet. She noted the town received two letters from neighbors opposing the project. She indicated the LPA voted to approve the request.

Mr. Ink, applicant, stated they wanted to rebuild the house with a similar footprint.

No public comment.

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

The motion carried unanimously by roll call vote.

XI. ADMINISTRATIVE AGENDA

A. Resolution 24-09: Extra-Duty Marine Patrols

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH LEE COUNTY SHERIFF'S OFFICE FOR EXTRA-DUTY WATERWAY DETAIL SERVICES AT THE RATES SPECIFIED IN EXHIBIT A TO THE AGREEMENT AND ADDENDUM; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager Hyatt stated a grant helped pay for the officers.

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

The motion carried unanimously.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hyatt described the work it took to obtain and set up the trailers. He noted an open house was scheduled for March 28, 2024. He commented that the trailers were a precinct for the elections this year. He thanked the staff for their hard work and indicated that the old trailers would be removed in about two weeks.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Vose reported that the owner of Key Estero was going to pay the amount owed, but she heard he did not. An amended pleading was filed and went back to the Special Magistrate. She stated that they were in foreclosure proceedings.

A. TDC Times Square Funding

Town Attorney Vose reported that Town Attorney Stuparich was working with the county attorney's office regarding the issue.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Atterholt noted that the owner of Santini Plaza applied for a food truck permit a few months ago and has since been approached by a food truck vendor. He stated the owner was looking for direction from the council. Director Kropocek reported that the staff had no reason to deny the temporary use permit, so it was issued. Community Development Senior Planner Jason Smalley described the permit process and what had to be done when the business name on the permit differed from the name of the food truck vendor.

Council Member Woodson noted that LPA Chair Cereceda requested that the council address food trucks. The topic was added to an M&P session.

Mayor Allers reported that Lee County was looking at temporary lighting from the base of the bridge to the Lani Kai. He noted they were looking for a new location for LeeTran trolleys. He asked whether the council supported offering the town hall property and they agreed.

Director Kropocek revealed that the building supervisor tagged derelict buildings and an RFP (Request for Proposals) will go out for a company to demolish the unsafe structures sometime in April.

No items from other members.

A. Resilient Lee Update

Council Member Woodson described the meeting last week and indicated that the town submitted an amended plan and it was approved.

XVI. ADJOURNMENT

Council Member King moved to adjourn the meeting; seconded by Mayor Allers. The motion carried unanimously.

The meeting was adjourned at 1:53 p.m.



Fort Myers Beach Management & Planning Session

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

Minutes

Thursday, March 7, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. FMB Draft Long-Term Recovery Plan

Discussion and Presentation of the FEMA CA Long-Term Recovery Plan Draft

Dan Tomczak, Planning Specialist and Certified Floodplain Manager, utilized PowerPoint for his presentation. Slides included Presenter, Who is FEMA Community Assistance, Using a Whole Community Approach, Leveraging Partnerships, Community Assistance Project Themes, Community Assistance for Fort Myers Beach, FEMA Technical Assistance Provided to Fort Myers Beach, What is a Recovery Plan, Potential Uses for a Recovery Plan, Long-Term Recovery Plan Fort Myers Beach, Project Planning Workbook, Community Partnerships and Potential Projects and Next Steps: Potential Implementation Projects.

Mr. Tomczak described partner funding opportunities and noted infrastructure projects were high on the priority list.

B. LDC/Comp Plan

A discussion regarding the Land Development Code Update Proposal

Town Manager Hyatt noted that the cost would come out of the building fund to cover the Land Development Code rework. Operations and Compliance Director Frankie Kropocek felt it would take about six months to wrap up. A consensus was reached to move forward with Axis.

C. Proposed Ordinance: Expedited Variance Review

This item is for discussion only:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 "REQUIRED HEARINGS" OF DIVISION 5 "PUBLIC HEARINGS AND REVIEW" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY ("LPA") FOR VARIANCES EXCEPT IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF THE TOWN CLERK RECEIVES A REQUEST BY ANYONE FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL WITHIN 10 DAYS AFTER THE LPA DECISION; A PUBLIC HEARING BEFORE THE TOWN COUNCIL IS REQUIRED FOR A VARIANCE IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF ANYONE REQUESTS SUCH HEARING WITHIN 10 DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Town Attorney Stuparich described the reason for the ordinance and highlighted specific language. She stated that the proposed ordinance was limited to variances only. She indicated that the agenda would contain information regarding appeals. The ordinance would apply to residential and commercial property owners. A consensus was reached to send it to the LPA (Local Planning Agency) for review.

D. Ordinance 23-05; Temporary Housing / Temporary Governmental Use Facilities in Specified Zoning Districts

This item is for discussion only:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE PLACEMENT OF TEMPORARY HOUSING AND TEMPORARY GOVERNMENTAL USE FACILITIES IN SPECIFIED ZONING DISTRICTS OF THE TOWN, PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, SUNSETTING OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE.

Town Attorney Stuparich indicated that the ordinance was brought back for further discussion to clarify what was previously approved. Mayor Allers thought the intent was to allow commercial property owners to operate a commercial business on their property. He questioned whether the business had to be the same as what was there before the hurricane or whether any business could operate on the property.

Regarding residential trailers on properties, Mayor Allers felt that three years was enough time for residents to have a plan to rebuild. Council Member Safford added that there was a year-long wait list for people elevating their homes. Director Kropocek indicated that a state mitigation document for people in the elevation program was still being discussed after 18 months. He suggested that the town contact people in the program to start working with them. Council Member Woodson clarified that people who reached the deadline date and then decided to sell their property could not stay in a trailer

on their property until it sold. Town Attorney Stuparich indicated that language addressing extenuating circumstances was in the ordinance. Regarding commercial businesses, Council Member Safford brought up existing businesses operating from trailers on property they do not own, like Mom's or La Ola. He questioned whether they should set up a zone for businesses to operate. Mayor Allers stated that pre-lan businesses like the Beach Bar were in control of what they were doing because they owned the land. He questioned how to address pre-lan businesses operating on someone else's property. The last category was new businesses in trailers that rented property from owners who lost their businesses. Council Member Safford was not against food trucks and wondered about setting up a designated area for them.

Mayor Allers questioned whether members favored a hard deadline to end portable businesses on commercial property. Council Member King questioned setting it up as they did for residents and revisiting extenuating circumstances. Council Member Woodson would allow exemptions for pre-lan existing businesses, but she did not support new businesses renting property in prime areas. The Sunset Grill was a restaurant, but the new business on the property had nothing to do with food. She felt a preference had to be made for pre-lan businesses that were building back. Mayor Allers brought up existing businesses that decided to lease their property to a completely different business to bring in revenue while they were in the process of rebuilding. He had a problem with the town dictating what businesses and commercial property owners could put on their land, whether they intended to build it back or not. Council Member Safford commented that new businesses in trailers may become successful enough to open a brick-and-mortar business somewhere on the island.

Vice Mayor Atterholt noted that some people liked the trailers while others wanted to encourage brick-and-mortar businesses. He thought the town hall property would be an interesting location for food trucks, especially during off season. He questioned whether they wanted to encourage new businesses that filled a need in the town, such as providing haircuts or a mobile health clinic. If they wanted brick-and-mortar businesses, the town had to find a way to incentivize those.

Council Member King discussed a brick-and-mortar restaurant going out of business in Iowa because of the food trucks. He questioned whether a food truck zone at the town hall property would compete with brick-and-mortar restaurants. Council Member Safford felt the food trucks might not do as well in the summer because of the lack of air conditioning.

Mayor Allers raised FEMA regulations and questioned whether allowing mobile food trucks would impact the town's flood insurance rating. Town Attorney Stuparich responded that she would do some research.

Mayor Allers brought the discussion back to how long the temporary use should be allowed. Council Member Safford suggested that businesses and residents building back should not be affected. He felt that places like Mom's who rent the property should be handled differently, although a trailer could not be there forever. Mayor Allers stated that they could not force the

property owner to build a building and someone would be negatively affected. He supported giving commercial and residential the same timelines and added they needed to review other ordinances to make sure there was no conflict.

Mayor Allers described the Heavenly Biscuit operation and noted that the property was too small to make a building feasible. He did not have a problem allowing them to stay on the property with their mobile trailer and questioned building that into code to allow those uses. Vice Mayor Atterholt stated that the owner of Santini Plaza would allow food trucks in his parking lot only until the brick-and-mortar restaurants opened. Director Kropocek noted that Cape Coral and Fort Myers had the same issue, so they allowed food trucks to operate in a specific area. He will contact those municipalities for more information. A consensus was reached to recommend the same timeframe for commercial and residential to demonstrate they were moving forward.

Vice Mayor Atterholt questioned what the town could do to encourage the owner of Key Estero and Sea Grape to make them hospitable to businesses on the island. Town Attorney Stuparich was unsure of the issues at those properties other than the parking lots.

Mayor Allers discussed the ordinance that prohibited mobile vendors but allowed the temporary use. He asked whether they could add conditions for temporary use. Town Attorney Stuparich thought the distinction was that temporary use would not be allowed under normal circumstances. Because they were in a build-back mode, they would make an exception to allow some uses not currently available for a limited time. She will draft an ordinance to address the issues discussed.

IV. AGENDA MANAGEMENT

A. March 2024

Add a discussion about Crescent Park.

Add a discussion concerning the permitting process.

Invite Chris Holley and/or Ron Book to a regular meeting for a legislative recap.

Farmer's Market vendors encroaching on businesses in Times Square was discussed.

V. ADJOURNMENT

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

The meeting was adjourned at 11:16.



Fort Myers Beach Management & Planning Session

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

Minutes

Thursday, March 7, 2024

11:30 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Town Council Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Safford and Council Member Woodson.
PSC Members present: Chair Thomas, PSC Member Blanchette, PSC Member Benak, PSC Member Jungwirth and PSC Member Knickle.

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Public Safety Committee

Discussion on Public Safety Committee Priorities and Projects Chair Thomas stated that the committee was looking for direction and guidance. PSC Member Knickle reported that representatives from the sheriff's office and the fire department provided monthly updates to keep the committee appraised of public safety issues. Vice Mayor Atterholt listed topics that the committee could be involved with. Mayor Allers felt that direct communication with Community Services (formerly Beach and Street Enforcement - B.A.S.E.) would benefit the community. He suggested that the PSC revisit activities they had worked on before Ian, such as crosswalks and sidewalks. Chair Thomas noted the PSC did not get enough information regarding topics like unsafe buildings, so they were unsure what to discuss. Mayor Allers indicated that sometimes issues were corrected quickly. Chair Thomas commented that some topics the PSC discussed had already been solved, but they did not find out until later.

Town Manager Hyatt stated that since the hurricane, items have been taken care of as soon as possible and there were many moving parts. He explained the signage delay and noted they continued to work with the county.

He added that Tom Yozzo would attend the PSC meetings and keep him in the loop. Chair Thomas commented that the sign situation was a good example of something that would have been good to know so that the PSC could concentrate on something else.

Mayor Allers noted that the PSC had been researching ways for Community Services to have radios with a direct line with the sheriff's department.

Operations and Compliance Director Frankie Kropocek stated that radios were on order and a dedicated channel with Lee County had been implemented. He explained how B.A.S.E. has been restructured and indicated the town had record parking revenues and no complaints over the last four months. He noted that the town could not enforce anything on Estero Blvd., but they could educate people.

Manager Tom Yozzo reviewed his background in security and the town's vision. He explained how he educated people who were involved in unsafe activities. He felt that neighborhood watches would work well in the town. Chair Thomas responded that the PSC had a neighborhood watch set up before Ian, which could be resurrected.

Chair Thomas suggested researching a golf cart lane starting at Beach Baptist and winding through neighborhoods ending near Sandy Bottoms. Mayor Allers responded that the route was mapped out for bicycles before the hurricane and would work for golf carts. Council Member King cautioned that residents in those neighborhoods had recently complained about increased car traffic. PSC Member Knickle mentioned developing a seasonal traffic flow to help traffic move better. Mayor Allers stated that the traffic dynamics would change once the roundabout was complete. Council Member King offered to invite FDOT (Florida Department of Transportation) for a presentation to the PSC.

Vice Mayor Atterholt felt it would be interesting to see where and if crimes occur every month. PSC Member Blanchette noted that before the hurricane, the LCSO's (Lee County Sheriff's Office) website used to have the location of crimes identified on an interactive map. PSC Member Benak felt that there was a lack of education for visitors and that communication with the new PIO (Public Information Officer) would be helpful.

Council Member Safford asked the PSC to investigate the pedestrian choke point between Avenue E and Margaritaville. PSC Member Jungwirth replied that they did and there were too many driveways to do anything. Director Kropocek described different barriers to direct pedestrians down a specific path, but without signage, education and enforcement, people would walk where they wanted to. Vice Mayor Atterholt added that the state opposed pedestrian guardrails. Director Kropocek stated the town had to develop options for a viable solution.

Manager Yozzo revealed that adhesive barriers to guide pedestrians were just installed at the intersection of 5th St. and San Carlos.

PSC Member Jungwirth felt they had direction now and Director Kropocek encouraged the PSC to contact him anytime.

IV. ADJOURNMENT

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

The meeting was adjourned at 12:30 p.m.

DRAFT

1. **Request:**

Meeting Date: March 18, 2024

Authorize the Town Manager to execute Amendment #2 to the Jacobs Project Management Co Agreement.

Why the action is necessary:

Amends the original agreement with Jacobs Project Management Co

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

The town entered into an agreement with Jacobs Project Management, Co. for building permit inspections on October 27, 2023. The agreement was amended to include additional terms and conditions in an Addendum on December 4, 2023 ("Amendment 1"). The parties now desire to further amend the agreement as provided in attached Amendment 2.

Attachments:

1. Jacobs Project Management Amendment 2
2. 23-171, Jacobs Project Management wAddendum
3. Jacobs Project Management Co Executed

Financial Impact:

6. **Alternative Action**

Do not approve Amendment #1

7. **Management Recommendations:**

8. **Recommended Approval:**

Andy Hyatt, Town Manager
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/12/2024
Approved - 3/13/2024
Approved - 3/13/2024
Final Approval - 3/13/2024

AMENDMENT NO. 2
to the
AGREEMENT FOR PROFESSIONAL SERVICES AGREEMENT FOR MUNICIPAL
SERVICES
for the
TOWN OF FORT MYERS BEACH, FLORIDA

This Amendment No. 1 (the “Amendment”) to the Agreement for Professional Services (the “Agreement”) is made effective as of this ____ day of _____ 2023 by and between the Town of Fort Myers Beach, Florida (hereinafter “Owner” or “Town”) and Jacobs Project Management Co., a Delaware corporation (hereinafter “Contractor”), collectively referred to herein as the “Parties”.

WHEREAS the Parties entered into a Professional Services Agreement for building permit inspections on October 27, 2023 (the “Agreement”);

WHEREAS the Parties agreed to begin work on October 27, 2023, under a Time & Materials (herein defined as “T&M”) basis until full-time staff were acquired, which would then change the contract to a Fixed Fee basis;

WHEREAS full-time staff began operations under this Agreement on November 4, 2023;

WHEREAS the Parties agree to change the Agreement from a T&M basis to a Fixed Fee basis, starting December 4, 2023, through November 30, 2024; and

WHEREAS the Parties agree that any additional permit reviews or other services needed under this Agreement shall be provided on a T&M basis and invoiced monthly as the services may occur, but only if requested in writing by the Town Manager.

NOW THEREFORE, Owner and Contractor agree to amend the Agreement as follows:

1. The Scope of the Agreement for the remainder of the contract is changed from a T&M basis to a Fixed Fee basis;
2. Contractor provided services under a T&M basis from October 27, 2023, through December 4, 2023. The remainder of the first contract year out of the total five (5) year agreement will commence on December 4, 2023, and run through November 30, 2024, on a Fixed Fee basis;
3. **Year One** Fixed Fee price is \$1,408,167 (One Million Four Hundred Eight Thousand One Hundred and Sixty-Seven Dollars);
4. The Fixed Fee budget for the Agreement shall pay for 1/12th of the annual Fixed Fee, invoiced each month, totaling in twelve (12) invoices, each contract year;

5. The Parties agree that any additional permit reviews or other services needed under this Agreement shall be provided on a T&M basis and invoiced monthly as the services may occur, but only if requested in writing by the Town Manager;
6. The hours worked for providing any T&M services after December 4, 2023, will be billed at One Hundred Twenty-Seven dollars and Zero cents (\$127.00) an hour;
7. Effective November 1, 2024, the fixed fee rate shall be increased based on ECI calculations provided in Appendix B of the Agreement. Each annual renewal out of the five (5) year agreement period shall reflect ECI and CPI escalations of the current year.
8. **Appendix A – Scope of Services** shall be amended to include the attached Appendix A.
9. **Appendix B – Compensation** shall be deleted in its entirety and replaced with the attached Appendix B.

This Amendment No. 1 together with the Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written understandings with respect to the subject matter set forth herein. Unless specifically stated all other terms and conditions of the Agreement shall remain in full force and effect. Neither this Amendment No. 1 nor the Agreement may be modified except in writing signed by an authorized representative of the Parties.

The Parties, intending to be legally bound, indicate their approval of the Amendment by their signatures below.

**JACOBS PROJECT
MANAGEMENT CO.**

**TOWN OF FORT MYERS BEACH,
FLORIDA**

Name:
Title:
Date:_____

Name:
Title:
Date:_____

Appendix A – Scope of Services

Contractor will provide the equivalent of four (4) additional full-time positions to provide Owner with one (1) Building Permit Plan Reviewer, two (2) Building Inspectors and one (1) Floodplain Coordinator.

JOB DESCRIPTIONS

Building Permit Plan Reviewer

The Building Permit Plan Reviewer has the primary responsibility to review and facilitate highly advanced technical operations of commercial and residential construction documents for compliance with the building, life safety, accessibility and energy codes.

Essential duties:

- Performs highly advanced technical review of commercial and residential construction documents for compliance with the building, life safety, accessibility and energy codes.
- Completes permit reviews in a timely manner;
- Assists with inter/intra-department reviews prior to the issuance of permits;
- Engages in communications between architects, engineers, contractor, city staff and officials to explain codes and resolve code issues related to construction plans;
- Verifies code compliance of construction drawings prior to approval of drawings necessary for issuance of permits;
- Attends preconstruction and predevelopment meetings with contractors, developers, owners, architects, engineers and city staff;
- Educates, trains, directs, and provides technical leadership or guidance to personnel and customers;
- Performs field work to inspect and resolve issues and complaints; and
- Prepares and maintains technical reports.

Qualifications:

- Must be familiar with State and City code compliance regarding construction and development of building plans, as required in the project;
- Knowledge of applicable Florida Statutes and local resolutions and ordinances relating to building and construction permit requirements and inspection procedures;
- Skill in public speaking and public relations with the ability to communicate effectively, orally and in writing, with a variety of audiences;
- Ability to work independently on complex tasks and deal with non-routing matters;
- Knowledge of business English, spelling and punctuation in order to prepare documents, compose letters;
- Knowledge of traditional office practices and procedures;
- Knowledge of the Department and the City's policies, procedures and practices; and
- Ability to analyze a variety of administrative problems and to make sound recommendations.

Building Inspector

The Building Inspector has the primary responsibility of performing regular building inspections of residential and commercial building during various stages of reconstruction and remodeling.

Essential Duties:

- Performs building inspections of residential and commercial buildings during various stages of construction and remodeling; ensures that structures are being constructed in accordance with approved plans and specifications and in compliance with the Florida Building Code and other applicable state and local laws, ordinances, and codes to ensure the health, safety, and welfare of the public;
- Conducts periodic field inspections before and during construction, remodeling, or repair; checks the safety of construction and installation practices; inspects the quality of materials and methods of construction for footings and foundations, excavations, wood framing, concrete work, steel erection, lathing, plastering, tile work, masonry, electrical, plumbing, and other construction work; makes final inspections to clear permits consistent with the Florida Building Code and other applicable regulations;
- Interprets codes and regulations; reviews, researches and communicates results in determining applicable codes/ordinances; explains required inspections, construction requirements and construction and repair methods and materials to owners, architects, engineers, contractors, and the public; advises owners on matters related to building permits; investigates and resolves building and related complaints;
- May assist with reviewing plans and specifications;
- Maintains a variety of files and records related to areas of assignment including permit binders, records of inspections made and actions taken, and plans; inputs and retrieves information from computer databases; prepares reports, correspondence, and a variety of other written materials as requested; and
- Performs the duties of the Building Official in his absence and other similar duties as assigned.

Qualifications:

- Must be familiar with State and City code compliance regarding field inspections and building inspections, as required in the project;
- Knowledge of applicable Florida Statutes and local resolutions and ordinances relating to building and construction permit requirements and inspection procedures;
- Knowledge of all applicable safety regulations for construction and redevelopment projects as determined by State and City regulations;
- Ability to read, understand and implement code and regulatory language as required by the project and City;
- Explains inspection process for employees and representatives of the City;
- Able to organize and prioritize several projects regarding building, safety, and construction procedures;
- Skill in public speaking and public relations with the ability to communicate effectively, orally and in writing, with a variety of audiences;
- Ability to work independently on complex tasks and deal with non-routing matters;

- Knowledge of business English, spelling and punctuation in order to prepare documents, compose letters, etc.;
- Knowledge of traditional office practices and procedures;
- Knowledge of the Department and the City's policies, procedures and practices; and
- Ability to analyze a variety of administrative problems and to make sound recommendations.

Floodplain Coordinator

The Floodplain Coordinator has the primary responsibility to review plans for the Federal Emergency Management Agency (herein defined as FEMA) floodplain compliance. Under administrative direction, this position is responsible for working with FEMA and the Insurance Services Office, Inc. to document and verify the City's involvement in the National Flood Insurance Program (NFIP) and Community Rating System. This position will facilitate the development of public trust and confidence in the City. Other duties may include assisting with the City's Community Rating System (CRS) activities, as directed by the City's building official or manager. This position will ensure the City of Fort Myers Beach meets these responsibilities in order to maintain and improve classification and flood insurance discounts within the program.

Essential Duties:

- Keeps the mission, vision and values of the City of Fort Myers Beach at the forefront of decision making and action;
- Builds strategic and collaborative relationships and interacts with others in a way that builds confidence and trust in the City;
- Provides excellent customer service by taking action to accomplish objectives, maintains high levels of work and productivity by generating innovative solutions to work situations;
- Plans review for approval or denial of permits based on relevant Land Development Code, Floodplain Regulations, and FEMA guidelines;
- Conducts review of the FEMA Repetitive Loss List for structures within City limits;
- Answers all inquiries on National Flood Insurance Programs posed by citizens, insurance agents and communicates with the public, as needed;
- Maintains elevation certifications, flood insurance rate maps and studies as required;
- Implements and presents public FEMA program information;
- Responds to National Flood Insurance Program inquiries from FEMA through investigation and providing written reports on the completed results to the appropriate requestor and keeps Building managers/directors informed of the requests; and
- Other Duties as Assigned.

Qualifications

To perform this job successfully, an individual must be able to perform each essential duty. The requirements listed below are representative of the knowledge, skill, and/or ability required:

- Knowledge and background in FEMA and NFIP programs and regulations including City program participation requirements, as required;
- Knowledge of FEMA Regulations and guidelines for flood mitigation grant work and processes;

- Knowledge of applicable Florida Statutes and local resolutions and ordinances relating to floodplain permit requirements and inspection procedures;
- Skill in public speaking and public relations with the ability to communicate effectively, orally and in writing, with a variety of audiences;
- Ability to work independently on complex tasks and deal with non-routing matters;
- Knowledge of business English, spelling and punctuation in order to prepare documents, compose letters, etc.;
- Knowledge of traditional office practices and procedures;
- Knowledge of the Department and the City's policies, procedures and practices; and
- Ability to analyze a variety of administrative problems and to make sound recommendations.

APPENDIX B – COMPENSATION

Compensation by Owner to Contractor will be as follows:

1. Contractor shall provide the Services as described in Appendix A on an annual fixed fee basis.

Year One fixed fee price is \$1,408,167 (One Million Four Hundred Eight Thousand One Hundred and Sixty-Seven Dollars).

The fixed fee shall be paid in twelve (12) invoices over twelve (12) months. Each invoice shall be paid a month in advance, on the first (1st) of the month, for each month that services will be provided. The invoice scheduling shall be processed as follows:

Target Invoice Month for 2024	Invoice Due for 2024
January 2024	December 1, 2023
February 2024	January 1, 2024
March 2024	February 1, 2024
April 2024	March 1, 2024
May 2024	April 1, 2024
June 2024	May 1, 2024
July 2024	June 1, 2024
August 2024	July 1, 2024
September 2024	August 1, 2024
October 2024	September 1, 2024
November 2024	October 1, 2024
December 2024	November 1, 2024

2. The Parties agree that good faith negotiations resulting in mutual agreement on an annual fixed fee adjustment is the preferred methodology.
3. In the event Contractor and Owner fail to agree thirty (30) days prior to the annual renewal date of this Agreement, the fixed fee compensation amount will be adjusted according to the adjustment formula denoted below:

$$AF = [((ECI) \times .70) + ((CPI) \times .30)] + 1.0$$

AF - Adjustment Formula

CPI = The twelve-month percent change (from June of the prior year to June of the current year) in the Consumer Price Index for All Urban Consumers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUUR000SA0.

ECI = The twelve-month percent change (from the second quarter of the prior year to the second quarter in the current year) in the Employment Cost Index for Total Compensation for Civilians Workers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series Id: CIU1010000000000A.

4. Upon each Agreement year renegotiation, Contractor shall continue to invoice Owner at the previous amount until the new Agreement year price is agreed upon or determined by the adjustment formula. Upon written agreement of the Parties as to the new Agreement year price, Contractor shall issue an invoice retroactively adjusting the previous fixed fee price.
5. Additional permit reviews or other services provided under this Agreement shall be provided on a Time & Materials basis and invoiced monthly as the services may occur, but only if requested in writing by the Town Manager.

RESOLUTION NUMBER 23-171

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING APPROVAL OF AN AGREEMENT WITH JACOBS PROJECT MANAGEMENT, CO. AUTHORIZING THE TOWN MANAGER TO EXECUTE AN ADDENDUM TO THE AGREEMENT; 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, the Town of Fort Myers Beach has been working diligently to review and approve incoming permits and maintain timely building inspections after Hurricane Ian; and

WHEREAS, it is in the best interest of the Town residents for the Town to contract with Jacobs Management Group, Co. to assist the Town with building inspection services, as needed.

NOW, THEREFORE, BE IT 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 memorializes, ratifies, and approves the actions of the Town Manager to contract with Jacobs Management Group, Co., and authorizes the Town Manager to sign the related addendum.

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 a motion by Council Member Veach and seconded by Council Member King, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Councilmember	Aye
Bill Veach, Councilmember	Aye
Karen Woodson, Councilmember	Aye

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (Feb 9, 2024 16:45 EST)

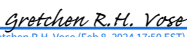
Dan Allers, Mayor

ATTEST:


Amy Baker (Feb 16, 2024 08:54 EST)

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 (Feb 8, 2024 17:50 EST)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day December 2023.

TOWN OF FORT MYERS BEACH, FLORIDA
CONTRACT ADDENDUM – JACOBS PROJECT MANAGEMENT CO.

THIS CONTRACT ADDENDUM is made and entered into this 4th day of December, 2023, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Jacobs Project Management Co., as “Contractor”, concerning that certain Agreement for Professional Services dated the 27th day of October, 2023 (“Agreement”).

WITNESSETH:

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors and required contract language has been recently amended by the Florida Legislature; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum as well as removal of inapplicable terms; and

WHEREAS, approval of this Addendum is in the best interest of the Town to facilitate and expedite building inspection services to its residents and those who do business in the Town.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. E-Verify Compliance. Paragraph 12 is amended for consistency current Florida law as follows: By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes “Employment Eligibility,” as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or

subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

3. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

4. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

5. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

6. Additional Terms. Notwithstanding any other provisions to the contrary, the parties further agree as follows:

A. Appendix B – Compensation, Paragraph 1 is revised to read as follows:

1. Contractor shall provide the Services as described in Appendix A on an annual lump sum basis.

Year One lump sum price is \$538,535 (Five Hundred Thirty-Eight Thousand Five Hundred Thirty-Five Dollars). ~~INCORRECT ASSUMPTION FROM B VOSE.~~

B. Paragraph 6.3 related to OSHA Compliance is deleted as not applicable.

C. Paragraph 7.13 is deleted in its entirety and the following sentence shall be included: Ownership of work products and intellectual property shall be determined in accordance with Florida law.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:


Amy Baker (Feb 16, 2024 08:54 EST)

Amy Baker, Town Clerk

Town of Fort Myers Beach


Andrew Hyatt (Feb 9, 2024 07:31 EST)

Andrew Hyatt, Town Manager

APPROVED AS TO FORM


Gretchen R.H. Vose (Feb 8, 2024 17:50 EST)

Gretchen R. H. "Becky" Vose, Town Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services (the "Agreement") is made and entered into this 27th day of October, 2023 (the "Effective Date") by and between Jacobs Project Management Co., a Delaware corporation ("Contractor"), whose address for formal notice is 6312 S. Fiddlers Green Circle, Suite 300N, Greenwood Village, CO 80111 and the Town of Fort Myers Beach, Florida ("Owner" or "Town"), whose address for formal notice is 2525 Estero Boulevard, Fort Myers Beach, FL 33931, who collectively shall be referred to as the "Parties."

The Parties agree to enter into this Agreement for certain services that Contractor is to perform for the benefit of Owner, subject to the terms and conditions set forth below:

1. SCOPE OF SERVICES

Contractor will perform building permit inspections on a Time and Materials basis commencing on the effective date consistent with the terms of this agreement. The Owner and Contractor will mutually agree to the date the scope of services set forth in Appendix A of this Agreement ("the Services") will be provided. Contractor shall perform the Services with the degree of skill and diligence normally employed by similarly situated personnel performing the same or similar services and within the design capacity and capability of Owner's facilities, when applicable.

2. TERM AND TERMINATION

- 2.1 The initial term of this Agreement shall be for a period of five (5) years, commencing on the Effective Date. Upon conclusion of the initial term, this Agreement shall renew on an annual basis, unless terminated by either party with ninety (90) days prior written notice.
- 2.2 This Agreement may have the end date revised by Contractor or Owner for either of the Parties' convenience on ninety (90) calendar days' written notice; or by either party for cause upon thirty (30) calendar days' written notice to the other party, if either party fails to substantially perform through no fault of the other and does not commence correction of such nonperformance within five (5) calendar days of written notice and diligently complete the correction thereafter. Upon early completion of this Agreement or termination, Contractor shall be paid for all authorized work performed up to the termination date.

3. COMPENSATION

Owner will compensate Contractor as set forth in Appendix B. Monthly invoices will be issued by Contractor for all work performed under this Agreement. Work performed under this Agreement may be performed using labor from affiliated companies of Contractor. Such labor will be billed to Owner under the same billing terms applicable to Contractor's employees.

4. INVOICES AND TERMS OF PAYMENT

- 4.1 Contractor will submit invoices on a monthly basis to Owner each month. Each invoice will be prepared on Contractor's standard form and supported by documentation according to Contractor's standard practice. No invoice shall be for an amount in excess of 1/12 of the total annual lump sum price, unless Contractor has provided additional services at the Town Manager's direction in writing. Additional services will be invoiced on a Time & Materials basis and denoted on a separate line item within a monthly invoice.
- 4.2 Invoices are due and payable on receipt. Interest at a rate of 1-1/2 percent per month, or the maximum permitted by law if less, will be charged on all past-due amounts starting thirty (30) calendar days after date of invoice receipt. Payments will first be credited to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested shall be withheld from payment, and the undisputed portion shall be paid. Interest shall accrue on any contested portion of the billing and shall be immediately payable if the contested billing is resolved in favor of Contractor. No interest will be due on any disputed portion of the billing if the dispute is ultimately mutually resolved.
- 4.3 If Owner fails to make payment in full within thirty (30) calendar days of the date due for any undisputed billing, Contractor may, after giving seven (7) calendar days' written notice to Owner, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, Contractor will have no liability to Owner for delays or damages caused by Owner because of such suspension.

5. OBLIGATIONS OF CONTRACTOR

5.1 Standard of Care

The standard of care applicable to Services is the degree of skill and diligence normally employed by those performing similar services at the time Services are performed. If Contractor delivers services, reports or documents based on information provided by others, Contractor does not warrant their accuracy, and is not responsible for any errors or omissions that have been incorporated into such documents by others. Owner's sole remedy for Contractor's breach of this standard of care is the re-performance of those Services directly related to such breach up to the limit of remedy set forth in this Agreement.

5.2 Contractor's Insurance

Contractor will maintain throughout this Agreement the following insurance:

- a. Worker's compensation and employer's liability insurance as required by the state where the work is performed.
- b. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- c. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of Contractor or of any of its employees,

- agents, or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
- d. Owner will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages identified above (except with respect to worker's compensation and employer's liability insurance).

5.3 Warranties and Completion

- 5.3.1 Contractor warrants that all materials and equipment furnished under this Agreement will be new, unless otherwise specified, of good quality and free from defective workmanship and materials. Warranties shall commence on the date of Completion as determined by Contractor.
- 5.3.2 If applicable, Contractor will pass through to Owner the warranty extended by the manufacturer for all products, equipment, systems or materials. There are no warranties that extend beyond the description on the face thereof.
- 5.3.3 All other warranties, express or implied, including any warranty of merchantability and any warranty of fitness for a particular purpose are expressly disclaimed.
- 5.3.4 CONTRACTOR MAKES NO WARRANTIES OR GUARANTEES ON THE SERVICES OR MATERIALS SUPPLIED BY CONTRACTORS. NO OTHER REPRESENTATION, GUARANTEE OR WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, IS INTENDED IN OR BY THIS AGREEMENT.

5.4 Independent Contractor; Subcontracts

- 5.4.1 Contractor represents that it is an independent contractor and will perform services as an independent contractor and not as an agent or employee of Owner.
- 5.4.2 Contractor may retain such other subconsultants or subcontractors as it may deem desirable for proper and timely performance of services. Contractor shall be responsible for the management of the subcontractors and subconsultants in the performance of their work.
- 5.4.3 The Services performed by Contractor under this Agreement shall be considered advisory only. Owner shall solely be responsible for the management and direction of its employees in following Contractor's advice and recommendations. No provision in this Agreement shall be construed to confer any managerial or supervisory authority on Contractor. Contractor shall have no responsibility in supervising, managing or directing Owner's employees and shall not be liable for the actions of Owner's employees in carrying out recommendations provided for by Contractor.

5.5 Access to Records

Contractor will maintain accounting records, in accordance with generally accepted accounting principles. Records relating to services will be available to Owner during Contractor's normal business hours for a period of one (1) year after Contractor's final invoice under this Agreement for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder, but excluding proprietary and confidential financial information. Only audit cost-reimbursable items will be subject to audit.

6. OBLIGATIONS OF OWNER

6.1 Owner-Furnished Data

Owner will provide to Contractor all data in Owner's possession, including copies of all applicable project requirements, design criteria or constraints, design and construction details or standards, previous reports, surveys, process descriptions, material balance sheets, process and instrumentation diagrams, permits issued by state, federal or local authorities relating to the operation of the project, and other information required or relating to Contractor's services on the project. Contractor will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by Owner. This is including, but not limited to, the installation of iWorQ or other program the Owner uses or may elect to use in the future for building permit review and inspection documentation on Contractor's devices for both training and scope delivery purposes.

6.2 Access to Facilities and Property

Owner will make its facilities accessible to Contractor as required for Contractor's performance of its services and will provide labor and safety equipment as required by Contractor for such access. Owner will perform, at no cost to Contractor, such tests of equipment, machinery, pipelines, and other components of Owner's facilities as may be required in connection with Contractor's services.

6.3 OSHA Compliance

Owner shall have the sole responsibility for identifying and performing any current or future improvements which may be required at the Project to bring the facilities within OSHA compliance.

6.4 Operations Assistance and Services

Owner authorizes Contractor to operate, modify, inspect and otherwise physically manipulate equipment, furnishings, property and other elements associated with the Services. Owner authorizes Contractor to take such actions in these respects as Contractor considers necessary to meet the objectives of the work.

6.5 Advertisements, Permits, and Access

Unless otherwise agreed to in the Agreement, Owner will and has the sole responsibility for obtaining, renewing, arranging, and paying for all advertisements for bids; permits and licenses required by local, state, or federal authorities (including those required for the operation of the project); and land, easements, rights-of-way, and access necessary for Contractor's Services.

6.6 Timely Review

Owner will examine Contractor's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor,

accountant, auditor, bond and financial advisors, and other consultants as Owner deems appropriate; and render in writing decisions required by Owner in a timely manner.

6.7 Prompt Notice

Owner will give prompt written notice to Contractor whenever Owner observes or becomes aware of any development that affects the scope or timing of Contractor's Services, or of any defect in the work of Contractor. Owner will give Contractor prompt notice when it is unable to follow the directives and advice of Contractor in any way related to the Services or promptly upon discovery that the directives or advice of Contractor has not been followed in relation to the Services being performed.

6.8 Asbestos or Hazardous Substances

6.8.1. If asbestos or hazardous substances in any form are encountered or suspected while performing the Services, Contractor will stop its own work in the affected portions of the Project to permit testing and evaluation.

6.8.2. If asbestos is suspected, Contractor will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated.

6.8.3. If applicable, if hazardous substances other than asbestos are suspected, Contractor will, if requested, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated.

6.8.4. Owner recognizes that Contractor assumes no risk and/or liability for a waste or hazardous waste site originated by other than Contractor.

6.9 Owner's Insurance

6.9.1. Owner will maintain property insurance on all facilities and property used by Contractor or associated in any way with the project.

6.9.2. Owner will provide for a waiver of subrogation as to all Owner-carried property damage insurance, in favor of Contractor, Contractor's officers, employees, affiliates, and subcontractors.

6.10. Litigation Assistance

The Services to be performed under this Agreement do not include costs of Contractor for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by Owner. All such Services required or requested of Contractor by Owner, except for suits or claims between the parties to this Agreement, will be reimbursed as mutually agreed.

6.11. Changes

Owner may request changes to the Services. If such changes affect Contractor's cost or time required for performance of the Services, an equitable adjustment will be made through an amendment to this Agreement. All requested changes will be made in writing and are subject to acceptance by Contractor.

7. GENERAL LEGAL PROVISIONS

- 7.1. Authorization to Proceed
Execution of this Agreement by Owner will be authorization for Contractor to proceed with the work, unless otherwise provided for in this Agreement.
- 7.2. Force Majeure
Contractor is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, governmental action, pandemics or other events beyond the control of Contractor. In any such event, Contractor's agreement price and schedule shall be equitably adjusted.
- 7.3. Fines and Civil Penalties
Contractor shall not be liable for any fines or civil penalties which may be imposed by a regulatory or enforcement agency for violations occurring on or after the commencement date of this Agreement, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance or that result from violations that occurred prior to the commencement date of this Agreement.
- 7.4. Limitation of Liability
Contractor's liability for Owner's damages, in the aggregate, shall not exceed the total compensation received by Contractor from Owner for services provided under this Agreement for the year of the Agreement in which the liability was incurred. Contractor's liability to Owner under this Agreement specifically excludes any and all indirect or consequential damages arising from the Work contemplated under this Agreement. Contractor shall not be liable for fines or civil penalties, which may be imposed by a regulatory agency, which are occasioned by the provision of services under this Agreement. The limitations of liability shall apply whether Contractor's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause, except the limitations shall not apply to willful misconduct or gross negligence. Said limitations shall apply to Contractor's officers, affiliated corporations, employees, and subcontractors.
- 7.5. Indemnification
Subject to the provisions of Sec. 768.28, Fla. Stat., and to the maximum extent permitted by law, the Parties agree to defend, indemnify and hold each other harmless from liability for claims, damages, costs and attorneys' fees arising from property damage, injury or death to a person, including their employees, caused by the negligent acts or omissions or willful misconduct of the indemnifying Party or any other party for whom the indemnifying Party is legally liable. Neither Party must indemnify the other against liability or damages arising out of death or bodily injury to persons or damage to property to the extent caused by the negligence of the indemnified Party.
- 7.6. Consequential Damages
To the maximum extent permitted by law, Contractor and Contractor's affiliated corporations, officers, employees, and subcontractors shall not be liable for Owner's special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect Contractor against indirect liability or third-party proceedings, and subject to the provisions of Sec. 768.28, Fla. Stat., Owner will indemnify Contractor for any such damages.
- 7.7. Severability and Survival

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability, indemnities and other express representations shall survive termination of this Agreement.

7.8. No Conflict of Interest for Future Work

The scope of Services performed by Contractor under this Agreement does not preclude Contractor from proposing on or providing such services to Owner in the future. Information and knowledge gained by Contractor in providing services under this Agreement shall not constitute a conflict of interest in proposing on or providing full contract operations, full contract maintenance, or full contract utility management.

7.9. Jurisdiction

The law of the State where the scope of Services is being performed shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

7.10. Third Party Beneficiaries and Scope of Services

This Agreement gives no rights or benefits to anyone other than Owner and Contractor and has no third-party beneficiaries. The Work to be performed for Owner by Contractor is defined solely by this Agreement, and not by any other contract or agreement that may be associated with the Work.

7.11. Assignments

This is a bilateral Agreement for professional services. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

7.12. Dispute Resolution

The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options.

7.13. Ownership of Work Products and Intellectual Property

All of the Work products of Contractor in executing this Project (including all the rights related to such Work Products) shall be the sole property of Contractor, subject to the rights of the Owner, as the case may be. All reports, data, information, documents, specifications, flow-charts, discoveries, know-how, inventions, processes, firmware, computer software, source and object code, and software documentation as well as any resulting intellectual property, including but not limited to, invention disclosures, provisional patent applications, regular patent applications, patents, trade secrets, proprietary information, copyrights, trademarks, service marks, domain names, trade dress, and moral rights developed during the course of, or as a result of, the Project shall be the sole property of Contractor, subject to the rights of the Owner, as the case may be.

7.14. Non-Solicitation of Contractor Employees

In the event that Owner recruits and procures the services of Contractor employees to provide a similar function for Owner, Owner shall pay to Contractor the sum of: (1) 100% of staff compensation for staff with annual salaries above \$75,000 plus

reimbursement of Contractor costs associated with training for Contractor Employees and the cost of replacing the position within Contractor's organizational structure.

8. PUBLIC RECORDS COMPLIANCE.

Contractor agrees that, to the extent that it may "act on behalf" of the Town ("public agency") within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2525 Estero Boulevard
Fort Myers Beach, FL 33931
AMY@FMBGOV.COM**

9. **Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.
10. **Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.
11. **Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.
12. **E-Verify Compliance.** Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.
13. **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that

Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

14. **Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) waives any right to file any action, suits or proceedings in, or remove any action to, Federal Court.
15. **Attorneys' Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fee and costs.

16. APPENDICES AND SIGNATURES

This Agreement, including its Appendices, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. The following Appendices and schedules are hereby made a part of this Agreement:

Appendix A—Scope of Services

Appendix B—Compensation

IN WITNESS WHEREOF, the parties execute below:

Approved for Owner


By: Andrew Hyatt
Name: Town Manager
Title: 10/27/23
Date

Approved for Jacobs Project Management Co.


By: JONATHAN A. MANTAY
Name: VICE PRESIDENT
Title: 10/27/2023
Date

APPENDIX A – SCOPE OF SERVICES

SCOPE OF SERVICES

The purpose of this scope is to authorize Contractor to provide Owner with staffing personnel to support building plan review and permitting requirements.

Services under this Agreement will be executed at the direction of Owner. While services may change or be modified by Owner, the general scope of services to be provided by Contractor includes the following scope items:

1. Contractor will provide the equivalent of four (4) full-time positions to provide Owner with Chief Building Official and three (3) permit technicians;
2. Contractor's Chief Building Official will be assigned to Owner full-time. This position will be responsible for fulfilling the role as defined in the job description section of this Appendix and will also be responsible for plans review and the delegation of plans review to that position within this scope;
3. The Plans Reviewer position will be utilized when needed and will be at the direction of the Chief Building Official and to be used after written notice has been provided by the Town Manager. This position will not be assigned to the project full-time as Contractor may utilize multiple employees to provide this service;
4. Contractor staff will provide services based upon a 40-hour work week.

SERVICES TO BE PROVIDED

1. One Chief Building Official, and three permit technicians (as described below) will be provided on-site in Town Hall by Contractor for 40 hours per week (for a total of 160 person hours per week). Contractor may provide qualified substitutes for such positions when the assigned personnel are not in attendance at work due to vacation, illness, injury, or other cause.
2. Computers and software for permit entry and tracking will be provided by Owner.
3. Vehicles will be provided by Owner with such vehicles only being used for Town business.
4. Additional building permit plan review or building permit inspections, if specifically requested in writing by the Town Manager, will be provided at the rate of \$127.00 per hour, and fees therefor will be invoiced separately.
5. The Town has an existing contract with a third-party firm to provide building inspection services.
6. As this Agreement does not create a relationship between Contractor's Chief Building Official and other third-party contractors responsible for building inspection services, Contractor's responsibilities as related to said third-party inspections are limited to only those as required by Chapter 553 of the Florida Statutes.
7. Contractor will reasonably rely upon the accuracy and completeness of the information/data provided by Owner and other third parties.
8. Barring any statutory requirements, Contractor is not responsible for the means and methods by which Owner personnel or third-party contractors complete or fail to complete their respective job duties.

JOB DESCRIPTIONS

Chief Building Official – Florida Licensed

The Chief Building Official manages and directs the programs and activities of the Building Division that includes permit processing and plan review functions to ensure compliance with adopted local and state codes, including the Florida Building, Florida Accessibility Code, and federal/state/local ordinances, standards, policies, and laws. The Chief Building Official manages a division that utilizes external plan reviewers when needed and third-party inspectors. It is the responsibility of the Chief Building Official to ensure submitted plans are efficiently processed, permitted, inspected, and ultimately brought into service of the Town.

- Performs and manages the review of all building permits for compliance with building codes, and all other state and local regulations.
- As required by Florida statute, coordinate, enforce and provide specialized assistance for inspection of all work authorized by permit on residential and non-residential facilities to assure conformity to approved plans and applicable ordinances, codes, laws and procedures.
- Determine completeness and accuracy of building permit applications and review for code and standards conformance.
- Authorize the issuance of Building Permits upon review by other Town departments, as applicable.
- Coordinate technical reviews and serve as the Building Department liaison to the Town and their third-party firms.
- Respond to field emergencies and coordinate appropriate response.
- Issue and authorize “Stop Work” orders and “Unsafe for Occupation” notices.
- Conduct pre-application and pre-construction meetings, as necessary.
- Review and approve proposed alternative materials and methods of construction.
- Regularly review computer database records to maintain an efficient flow of work to the Building Plan Reviewers (as applicable); ensure software systems are being used properly and to the best of their ability.
- Work with attorneys representing the Town and other staff on difficult code compliance and interpretations.
- Receive complaints and inquiries from the Town and citizens relative to construction conditions or activities in the community.
- Gather pertinent data, evaluate the facts of situations, and attempt to handle complaints and inquiries at first contact.
- Interpret and enforce the latest adopted Florida Building Codes, Florida Accessibility Code, and federal/state/local ordinances, standards, policies and laws.
- Knowledge of and ability to interpret Federal Emergency Management Agency (FEMA) and local flood regulations and ordinances.
- Represent the Town at building code conferences and informational meetings.
- Provide a seamless building and construction review process which provides quick turnaround and a clear approval process and forms (not including a policy analysis).

-

Basic Qualifications

- Bachelor's degree in Engineering, Architecture, Construction Technology or related field, or a high school diploma or equivalent and 10 years of building, architecture or construction experience in lieu of the degree.
- Three (3) years of supervisory experience.
- Current Building Official License from the State of Florida.
- Experience in construction practices, the latest adopted Florida Building Codes and current national electric code.
- Possess a valid Florida driver's license with a clean driving record with no major infractions.

Preferred Qualifications

- Ten (10) years of experience in building inspection / plans review, engineering, architecture or construction.
- Experience with – electronic plan review and permitting software – CityWorks preferred
- Excellent communication skills to deal effectively with developers, architects, engineers, and other design professionals.

Permit Technicians

The Permit Technicians will provide advanced, responsible, customer service work. The employee is responsible for providing assistance and information to the general public. Knowledge in the areas of building plans review, permit issuance and planning and zoning is desired but not required. Work may vary in complexity and responsibility.

- Enters information from permit applications into permitting system to determine types of reviews necessary for the projects and to determine when projects are scheduled for review, status of projects, number of dates for review, cost of review, permit number and issue date.
- Follows the Town's "how to create a permit" process.
- Files plans for residential and commercial projects and enters appropriate data.
- Receives permit applications from customers, reviews and enters relevant data and forwards to plans reviewers.
- Verifies permits issued and compares with permit application.
- Verifies contractors' business license and insurance coverage.
- Answers all technical questions regarding requirements for submitting applications for all types of permits.
- Assists builders, contractors, and the general public in making applications for various permits and advises applicants of requirements.
- Answers questions pertaining to the progress of permits and advises applicants of data and submittals needed to have requirements met.

- Receives applications/plans and reviews items for completeness.
- Assures that permit applicants have obtained all pre-approvals, i.e., Solid Waste, Utilities, Driveway permits, etc.
- Reviews permit application forms for completeness and assures that submittals are attached.
- Determines and calculates various permit fees. Calculates and collects plan review fees.
- Processes all applications/plans and re-submittals that are received by electronically, in-person, and mail.
- Answers emails
- Answers phone calls
- Performs related work as required.

Education, Experience, Licensing

Requires any combination of education and experience equivalent to graduation from High School and two years of customer service experience.

Knowledge, Skills and Abilities

- Ability to deal with the general public in a prompt, professional, and courteous manner.
- Ability to perform basic mathematical skills in determining square footage, linear feet, etc.
- Ability to learn associated computer systems applicable to permitting, such as GIS, iWorq, etc.

Plans Examiner – services will be provided on a T&M basis with Town Manager approval

- Performs highly advanced technical review of residential and commercial construction documents for compliance with the Florida Building, Florida Accessibility Code, and federal/state/local ordinances, standards, policies, and laws.
- Completes permit reviews in a timely manner.
- Assists with inter/intra-department reviews prior to the issuance of permits.
- Engages in communications between the public, architects, engineers, contractor, Town staff and officials to explain codes and resolve code issues related to construction plans.
- Verifies code compliance of construction drawings prior to approval of drawings necessary for issuance of permits.
- Attends preconstruction and predevelopment meetings with contractors, developers, owners, architects, engineers and Town staff.
- Educates, trains, directs, and provides technical leadership or guidance to both design consultants and Town staff.
- Performs other duties as assigned, including cross training with the Building Official.

Basic Qualifications

- High school diploma or equivalent and ICC Plans Examiner Certification

- Minimum of four (4) years as a building inspector, contractor, or plans examiner that includes one (1) or more years performing commercial or educational plans review, or completion of one (1) year of training to perform advanced commercial examiner tasks.
- Knowledge of and ability to apply applicable standards of the Florida Building Code and Florida Accessibility Code.
- Experience reviewing construction, plumbing, electrical and mechanical plans with related regulations.
- Knowledge of the methods and practices involved in the construction of educational facilities and related standard testing methods.
- Ability to read and interpret complex building drawings and related documents to recognize code violations, solve problems and recommend solutions.
- Ability to communicate accurate and understandable construction design information relating to codes with architects, engineers, contractors, and school district staff.
- Ability to establish and maintain effective working relationships with contractors, builders, Town staff, city and county officials and the general public.

Preferred Qualifications

- State of Florida Commercial Plans Examiner licenses to review all plans associated with new residential and commercial construction and any manner of remodel or retrofit.
- Experience with the electronic plans software; iWorQ permitting software package and digital plan review platforms.
- Knowledge of and ability to interpret Federal Emergency Management Agency (FEMA) and local flood regulations and ordinances.

APPENDIX B – COMPENSATION

Compensation by Owner to Contractor will be as follows:

1. Contractor shall provide the Services as described in Appendix A on an annual lump sum basis.

Year One lump sum price is **\$538,535** (Five Hundred Thirty-Eight Thousand Five Hundred Thirty-Five Dollars). INCORRECT ASSUMPTION FROM B. VOSE

2. The Parties agree that good faith negotiations resulting in mutual agreement on an annual lump sum adjustment is the preferred methodology.
3. In the event Contractor and Owner fail to agree thirty (30) days prior to the annual renewal date of this Agreement, the lump sum compensation amount will be adjusted according to the adjustment formula denoted below:

$$AF = [((ECI) \times .70) + ((CPI) \times .30)] + 1.0$$

AF - Adjustment Formula

CPI = The twelve-month percent change (from June of the prior year to June of the current year) in the Consumer Price Index for All Urban Consumers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUUR000SA0.

ECI = The twelve-month percent change (from the second quarter of the prior year to the second quarter in the current year) in the Employment Cost Index for Total Compensation for Civilians Workers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series Id: CIU1010000000000A.

4. Upon each Agreement year renegotiation, Contractor shall continue to invoice Owner at the previous amount until the new Agreement year price is agreed upon or determined by the adjustment formula. Upon written agreement of the Parties as to the new Agreement year price, Contractor shall issue an invoice retroactively adjusting the previous lump sum price.
5. Additional permit reviews or other services provided under this Agreement shall be provided on a Time & Materials basis and invoiced monthly as the services may occur, but only if requested in writing by the Town Manager.

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services (the "Agreement") is made and entered into this 27th day of October, 2023 (the "Effective Date") by and between Jacobs Project Management Co., a Delaware corporation ("Contractor"), whose address for formal notice is 6312 S. Fiddlers Green Circle, Suite 300N, Greenwood Village, CO 80111 and the Town of Fort Myers Beach, Florida ("Owner" or "Town"), whose address for formal notice is 2525 Estero Boulevard, Fort Myers Beach, FL 33931, who collectively shall be referred to as the "Parties."

The Parties agree to enter into this Agreement for certain services that Contractor is to perform for the benefit of Owner, subject to the terms and conditions set forth below:

1. SCOPE OF SERVICES

Contractor will perform building permit inspections on a Time and Materials basis commencing on the effective date consistent with the terms of this agreement. The Owner and Contractor will mutually agree to the date the scope of services set forth in Appendix A of this Agreement ("the Services") will be provided. Contractor shall perform the Services with the degree of skill and diligence normally employed by similarly situated personnel performing the same or similar services and within the design capacity and capability of Owner's facilities, when applicable.

2. TERM AND TERMINATION

- 2.1 The initial term of this Agreement shall be for a period of five (5) years, commencing on the Effective Date. Upon conclusion of the initial term, this Agreement shall renew on an annual basis, unless terminated by either party with ninety (90) days prior written notice.
- 2.2 This Agreement may have the end date revised by Contractor or Owner for either of the Parties' convenience on ninety (90) calendar days' written notice; or by either party for cause upon thirty (30) calendar days' written notice to the other party, if either party fails to substantially perform through no fault of the other and does not commence correction of such nonperformance within five (5) calendar days of written notice and diligently complete the correction thereafter. Upon early completion of this Agreement or termination, Contractor shall be paid for all authorized work performed up to the termination date.

3. COMPENSATION

Owner will compensate Contractor as set forth in Appendix B. Monthly invoices will be issued by Contractor for all work performed under this Agreement. Work performed under this Agreement may be performed using labor from affiliated companies of Contractor. Such labor will be billed to Owner under the same billing terms applicable to Contractor's employees.

4. INVOICES AND TERMS OF PAYMENT

- 4.1 Contractor will submit invoices on a monthly basis to Owner each month. Each invoice will be prepared on Contractor's standard form and supported by documentation according to Contractor's standard practice. No invoice shall be for an amount in excess of 1/12 of the total annual lump sum price, unless Contractor has provided additional services at the Town Manager's direction in writing. Additional services will be invoiced on a Time & Materials basis and denoted on a separate line item within a monthly invoice.
- 4.2 Invoices are due and payable on receipt. Interest at a rate of 1-1/2 percent per month, or the maximum permitted by law if less, will be charged on all past-due amounts starting thirty (30) calendar days after date of invoice receipt. Payments will first be credited to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested shall be withheld from payment, and the undisputed portion shall be paid. Interest shall accrue on any contested portion of the billing and shall be immediately payable if the contested billing is resolved in favor of Contractor. No interest will be due on any disputed portion of the billing if the dispute is ultimately mutually resolved.
- 4.3 If Owner fails to make payment in full within thirty (30) calendar days of the date due for any undisputed billing, Contractor may, after giving seven (7) calendar days' written notice to Owner, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, Contractor will have no liability to Owner for delays or damages caused by Owner because of such suspension.

5. OBLIGATIONS OF CONTRACTOR

5.1 Standard of Care

The standard of care applicable to Services is the degree of skill and diligence normally employed by those performing similar services at the time Services are performed. If Contractor delivers services, reports or documents based on information provided by others, Contractor does not warrant their accuracy, and is not responsible for any errors or omissions that have been incorporated into such documents by others. Owner's sole remedy for Contractor's breach of this standard of care is the re-performance of those Services directly related to such breach up to the limit of remedy set forth in this Agreement.

5.2 Contractor's Insurance

Contractor will maintain throughout this Agreement the following insurance:

- a. Worker's compensation and employer's liability insurance as required by the state where the work is performed.
- b. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- c. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of Contractor or of any of its employees,

- agents, or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
- d. Owner will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages identified above (except with respect to worker's compensation and employer's liability insurance).

5.3 Warranties and Completion

- 5.3.1 Contractor warrants that all materials and equipment furnished under this Agreement will be new, unless otherwise specified, of good quality and free from defective workmanship and materials. Warranties shall commence on the date of Completion as determined by Contractor.
- 5.3.2 If applicable, Contractor will pass through to Owner the warranty extended by the manufacturer for all products, equipment, systems or materials. There are no warranties that extend beyond the description on the face thereof.
- 5.3.3 All other warranties, express or implied, including any warranty of merchantability and any warranty of fitness for a particular purpose are expressly disclaimed.
- 5.3.4 CONTRACTOR MAKES NO WARRANTIES OR GUARANTEES ON THE SERVICES OR MATERIALS SUPPLIED BY CONTRACTORS. NO OTHER REPRESENTATION, GUARANTEE OR WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, IS INTENDED IN OR BY THIS AGREEMENT.

5.4 Independent Contractor; Subcontracts

- 5.4.1 Contractor represents that it is an independent contractor and will perform services as an independent contractor and not as an agent or employee of Owner.
- 5.4.2 Contractor may retain such other subconsultants or subcontractors as it may deem desirable for proper and timely performance of services. Contractor shall be responsible for the management of the subcontractors and subconsultants in the performance of their work.
- 5.4.3 The Services performed by Contractor under this Agreement shall be considered advisory only. Owner shall solely be responsible for the management and direction of its employees in following Contractor's advice and recommendations. No provision in this Agreement shall be construed to confer any managerial or supervisory authority on Contractor. Contractor shall have no responsibility in supervising, managing or directing Owner's employees and shall not be liable for the actions of Owner's employees in carrying out recommendations provided for by Contractor.

5.5 Access to Records

Contractor will maintain accounting records, in accordance with generally accepted accounting principles. Records relating to services will be available to Owner during Contractor's normal business hours for a period of one (1) year after Contractor's final invoice under this Agreement for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder, but excluding proprietary and confidential financial information. Only audit cost-reimbursable items will be subject to audit.

6. OBLIGATIONS OF OWNER

6.1 Owner-Furnished Data

Owner will provide to Contractor all data in Owner's possession, including copies of all applicable project requirements, design criteria or constraints, design and construction details or standards, previous reports, surveys, process descriptions, material balance sheets, process and instrumentation diagrams, permits issued by state, federal or local authorities relating to the operation of the project, and other information required or relating to Contractor's services on the project. Contractor will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by Owner. This is including, but not limited to, the installation of iWorQ or other program the Owner uses or may elect to use in the future for building permit review and inspection documentation on Contractor's devices for both training and scope delivery purposes.

6.2 Access to Facilities and Property

Owner will make its facilities accessible to Contractor as required for Contractor's performance of its services and will provide labor and safety equipment as required by Contractor for such access. Owner will perform, at no cost to Contractor, such tests of equipment, machinery, pipelines, and other components of Owner's facilities as may be required in connection with Contractor's services.

6.3 OSHA Compliance

Owner shall have the sole responsibility for identifying and performing any current or future improvements which may be required at the Project to bring the facilities within OSHA compliance.

6.4 Operations Assistance and Services

Owner authorizes Contractor to operate, modify, inspect and otherwise physically manipulate equipment, furnishings, property and other elements associated with the Services. Owner authorizes Contractor to take such actions in these respects as Contractor considers necessary to meet the objectives of the work.

6.5 Advertisements, Permits, and Access

Unless otherwise agreed to in the Agreement, Owner will and has the sole responsibility for obtaining, renewing, arranging, and paying for all advertisements for bids; permits and licenses required by local, state, or federal authorities (including those required for the operation of the project); and land, easements, rights-of-way, and access necessary for Contractor's Services.

6.6 Timely Review

Owner will examine Contractor's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor,

accountant, auditor, bond and financial advisors, and other consultants as Owner deems appropriate; and render in writing decisions required by Owner in a timely manner.

6.7 Prompt Notice

Owner will give prompt written notice to Contractor whenever Owner observes or becomes aware of any development that affects the scope or timing of Contractor's Services, or of any defect in the work of Contractor. Owner will give Contractor prompt notice when it is unable to follow the directives and advice of Contractor in any way related to the Services or promptly upon discovery that the directives or advice of Contractor has not been followed in relation to the Services being performed.

6.8 Asbestos or Hazardous Substances

6.8.1. If asbestos or hazardous substances in any form are encountered or suspected while performing the Services, Contractor will stop its own work in the affected portions of the Project to permit testing and evaluation.

6.8.2. If asbestos is suspected, Contractor will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated.

6.8.3. If applicable, if hazardous substances other than asbestos are suspected, Contractor will, if requested, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated.

6.8.4. Owner recognizes that Contractor assumes no risk and/or liability for a waste or hazardous waste site originated by other than Contractor.

6.9 Owner's Insurance

6.9.1. Owner will maintain property insurance on all facilities and property used by Contractor or associated in any way with the project.

6.9.2. Owner will provide for a waiver of subrogation as to all Owner-carried property damage insurance, in favor of Contractor, Contractor's officers, employees, affiliates, and subcontractors.

6.10. Litigation Assistance

The Services to be performed under this Agreement do not include costs of Contractor for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by Owner. All such Services required or requested of Contractor by Owner, except for suits or claims between the parties to this Agreement, will be reimbursed as mutually agreed.

6.11. Changes

Owner may request changes to the Services. If such changes affect Contractor's cost or time required for performance of the Services, an equitable adjustment will be made through an amendment to this Agreement. All requested changes will be made in writing and are subject to acceptance by Contractor.

7. GENERAL LEGAL PROVISIONS

- 7.1. Authorization to Proceed
Execution of this Agreement by Owner will be authorization for Contractor to proceed with the work, unless otherwise provided for in this Agreement.
- 7.2. Force Majeure
Contractor is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, governmental action, pandemics or other events beyond the control of Contractor. In any such event, Contractor's agreement price and schedule shall be equitably adjusted.
- 7.3. Fines and Civil Penalties
Contractor shall not be liable for any fines or civil penalties which may be imposed by a regulatory or enforcement agency for violations occurring on or after the commencement date of this Agreement, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance or that result from violations that occurred prior to the commencement date of this Agreement.
- 7.4. Limitation of Liability
Contractor's liability for Owner's damages, in the aggregate, shall not exceed the total compensation received by Contractor from Owner for services provided under this Agreement for the year of the Agreement in which the liability was incurred. Contractor's liability to Owner under this Agreement specifically excludes any and all indirect or consequential damages arising from the Work contemplated under this Agreement. Contractor shall not be liable for fines or civil penalties, which may be imposed by a regulatory agency, which are occasioned by the provision of services under this Agreement. The limitations of liability shall apply whether Contractor's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause, except the limitations shall not apply to willful misconduct or gross negligence. Said limitations shall apply to Contractor's officers, affiliated corporations, employees, and subcontractors.
- 7.5. Indemnification
Subject to the provisions of Sec. 768.28, Fla. Stat., and to the maximum extent permitted by law, the Parties agree to defend, indemnify and hold each other harmless from liability for claims, damages, costs and attorneys' fees arising from property damage, injury or death to a person, including their employees, caused by the negligent acts or omissions or willful misconduct of the indemnifying Party or any other party for whom the indemnifying Party is legally liable. Neither Party must indemnify the other against liability or damages arising out of death or bodily injury to persons or damage to property to the extent caused by the negligence of the indemnified Party.
- 7.6. Consequential Damages
To the maximum extent permitted by law, Contractor and Contractor's affiliated corporations, officers, employees, and subcontractors shall not be liable for Owner's special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect Contractor against indirect liability or third-party proceedings, and subject to the provisions of Sec. 768.28, Fla. Stat., Owner will indemnify Contractor for any such damages.
- 7.7. Severability and Survival

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability, indemnities and other express representations shall survive termination of this Agreement.

7.8. No Conflict of Interest for Future Work

The scope of Services performed by Contractor under this Agreement does not preclude Contractor from proposing on or providing such services to Owner in the future. Information and knowledge gained by Contractor in providing services under this Agreement shall not constitute a conflict of interest in proposing on or providing full contract operations, full contract maintenance, or full contract utility management.

7.9. Jurisdiction

The law of the State where the scope of Services is being performed shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

7.10. Third Party Beneficiaries and Scope of Services

This Agreement gives no rights or benefits to anyone other than Owner and Contractor and has no third-party beneficiaries. The Work to be performed for Owner by Contractor is defined solely by this Agreement, and not by any other contract or agreement that may be associated with the Work.

7.11. Assignments

This is a bilateral Agreement for professional services. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

7.12. Dispute Resolution

The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options.

7.13. Ownership of Work Products and Intellectual Property

All of the Work products of Contractor in executing this Project (including all the rights related to such Work Products) shall be the sole property of Contractor, subject to the rights of the Owner, as the case may be. All reports, data, information, documents, specifications, flow-charts, discoveries, know-how, inventions, processes, firmware, computer software, source and object code, and software documentation as well as any resulting intellectual property, including but not limited to, invention disclosures, provisional patent applications, regular patent applications, patents, trade secrets, proprietary information, copyrights, trademarks, service marks, domain names, trade dress, and moral rights developed during the course of, or as a result of, the Project shall be the sole property of Contractor, subject to the rights of the Owner, as the case may be.

7.14. Non-Solicitation of Contractor Employees

In the event that Owner recruits and procures the services of Contractor employees to provide a similar function for Owner, Owner shall pay to Contractor the sum of: (1) 100% of staff compensation for staff with annual salaries above \$75,000 plus

reimbursement of Contractor costs associated with training for Contractor Employees and the cost of replacing the position within Contractor's organizational structure.

8. PUBLIC RECORDS COMPLIANCE.

Contractor agrees that, to the extent that it may "act on behalf" of the Town ("public agency") within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2525 Estero Boulevard
Fort Myers Beach, FL 33931
AMY@FMBGOV.COM**

9. **Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.
10. **Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.
11. **Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.
12. **E-Verify Compliance.** Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.
13. **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that

Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

14. **Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) waives any right to file any action, suits or proceedings in, or remove any action to, Federal Court.
15. **Attorneys' Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fee and costs.

16. APPENDICES AND SIGNATURES

This Agreement, including its Appendices, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. The following Appendices and schedules are hereby made a part of this Agreement:

Appendix A—Scope of Services

Appendix B—Compensation

IN WITNESS WHEREOF, the parties execute below:

Approved for Owner


By: Andrew Hyatt
Name: Town Manager
Title: 10/27/23
Date

Approved for Jacobs Project Management Co.


By: JONATHAN A. MANTAY
Name: VICE PRESIDENT
Title: 10/27/2023
Date

APPENDIX A – SCOPE OF SERVICES

SCOPE OF SERVICES

The purpose of this scope is to authorize Contractor to provide Owner with staffing personnel to support building plan review and permitting requirements.

Services under this Agreement will be executed at the direction of Owner. While services may change or be modified by Owner, the general scope of services to be provided by Contractor includes the following scope items:

1. Contractor will provide the equivalent of four (4) full-time positions to provide Owner with Chief Building Official and three (3) permit technicians;
2. Contractor's Chief Building Official will be assigned to Owner full-time. This position will be responsible for fulfilling the role as defined in the job description section of this Appendix and will also be responsible for plans review and the delegation of plans review to that position within this scope;
3. The Plans Reviewer position will be utilized when needed and will be at the direction of the Chief Building Official and to be used after written notice has been provided by the Town Manager. This position will not be assigned to the project full-time as Contractor may utilize multiple employees to provide this service;
4. Contractor staff will provide services based upon a 40-hour work week.

SERVICES TO BE PROVIDED

1. One Chief Building Official, and three permit technicians (as described below) will be provided on-site in Town Hall by Contractor for 40 hours per week (for a total of 160 person hours per week). Contractor may provide qualified substitutes for such positions when the assigned personnel are not in attendance at work due to vacation, illness, injury, or other cause.
2. Computers and software for permit entry and tracking will be provided by Owner.
3. Vehicles will be provided by Owner with such vehicles only being used for Town business.
4. Additional building permit plan review or building permit inspections, if specifically requested in writing by the Town Manager, will be provided at the rate of \$127.00 per hour, and fees therefor will be invoiced separately.
5. The Town has an existing contract with a third-party firm to provide building inspection services.
6. As this Agreement does not create a relationship between Contractor's Chief Building Official and other third-party contractors responsible for building inspection services, Contractor's responsibilities as related to said third-party inspections are limited to only those as required by Chapter 553 of the Florida Statutes.
7. Contractor will reasonably rely upon the accuracy and completeness of the information/data provided by Owner and other third parties.
8. Barring any statutory requirements, Contractor is not responsible for the means and methods by which Owner personnel or third-party contractors complete or fail to complete their respective job duties.

JOB DESCRIPTIONS

Chief Building Official – Florida Licensed

The Chief Building Official manages and directs the programs and activities of the Building Division that includes permit processing and plan review functions to ensure compliance with adopted local and state codes, including the Florida Building, Florida Accessibility Code, and federal/state/local ordinances, standards, policies, and laws. The Chief Building Official manages a division that utilizes external plan reviewers when needed and third-party inspectors. It is the responsibility of the Chief Building Official to ensure submitted plans are efficiently processed, permitted, inspected, and ultimately brought into service of the Town.

- Performs and manages the review of all building permits for compliance with building codes, and all other state and local regulations.
- As required by Florida statute, coordinate, enforce and provide specialized assistance for inspection of all work authorized by permit on residential and non-residential facilities to assure conformity to approved plans and applicable ordinances, codes, laws and procedures.
- Determine completeness and accuracy of building permit applications and review for code and standards conformance.
- Authorize the issuance of Building Permits upon review by other Town departments, as applicable.
- Coordinate technical reviews and serve as the Building Department liaison to the Town and their third-party firms.
- Respond to field emergencies and coordinate appropriate response.
- Issue and authorize “Stop Work” orders and “Unsafe for Occupation” notices.
- Conduct pre-application and pre-construction meetings, as necessary.
- Review and approve proposed alternative materials and methods of construction.
- Regularly review computer database records to maintain an efficient flow of work to the Building Plan Reviewers (as applicable); ensure software systems are being used properly and to the best of their ability.
- Work with attorneys representing the Town and other staff on difficult code compliance and interpretations.
- Receive complaints and inquiries from the Town and citizens relative to construction conditions or activities in the community.
- Gather pertinent data, evaluate the facts of situations, and attempt to handle complaints and inquiries at first contact.
- Interpret and enforce the latest adopted Florida Building Codes, Florida Accessibility Code, and federal/state/local ordinances, standards, policies and laws.
- Knowledge of and ability to interpret Federal Emergency Management Agency (FEMA) and local flood regulations and ordinances.
- Represent the Town at building code conferences and informational meetings.
- Provide a seamless building and construction review process which provides quick turnaround and a clear approval process and forms (not including a policy analysis).

-

Basic Qualifications

- Bachelor's degree in Engineering, Architecture, Construction Technology or related field, or a high school diploma or equivalent and 10 years of building, architecture or construction experience in lieu of the degree.
- Three (3) years of supervisory experience.
- Current Building Official License from the State of Florida.
- Experience in construction practices, the latest adopted Florida Building Codes and current national electric code.
- Possess a valid Florida driver's license with a clean driving record with no major infractions.

Preferred Qualifications

- Ten (10) years of experience in building inspection / plans review, engineering, architecture or construction.
- Experience with – electronic plan review and permitting software – CityWorks preferred
- Excellent communication skills to deal effectively with developers, architects, engineers, and other design professionals.

Permit Technicians

The Permit Technicians will provide advanced, responsible, customer service work. The employee is responsible for providing assistance and information to the general public. Knowledge in the areas of building plans review, permit issuance and planning and zoning is desired but not required. Work may vary in complexity and responsibility.

- Enters information from permit applications into permitting system to determine types of reviews necessary for the projects and to determine when projects are scheduled for review, status of projects, number of dates for review, cost of review, permit number and issue date.
- Follows the Town's "how to create a permit" process.
- Files plans for residential and commercial projects and enters appropriate data.
- Receives permit applications from customers, reviews and enters relevant data and forwards to plans reviewers.
- Verifies permits issued and compares with permit application.
- Verifies contractors' business license and insurance coverage.
- Answers all technical questions regarding requirements for submitting applications for all types of permits.
- Assists builders, contractors, and the general public in making applications for various permits and advises applicants of requirements.
- Answers questions pertaining to the progress of permits and advises applicants of data and submittals needed to have requirements met.

- Receives applications/plans and reviews items for completeness.
- Assures that permit applicants have obtained all pre-approvals, i.e., Solid Waste, Utilities, Driveway permits, etc.
- Reviews permit application forms for completeness and assures that submittals are attached.
- Determines and calculates various permit fees. Calculates and collects plan review fees.
- Processes all applications/plans and re-submittals that are received by electronically, in-person, and mail.
- Answers emails
- Answers phone calls
- Performs related work as required.

Education, Experience, Licensing

Requires any combination of education and experience equivalent to graduation from High School and two years of customer service experience.

Knowledge, Skills and Abilities

- Ability to deal with the general public in a prompt, professional, and courteous manner.
- Ability to perform basic mathematical skills in determining square footage, linear feet, etc.
- Ability to learn associated computer systems applicable to permitting, such as GIS, iWorq, etc.

Plans Examiner – services will be provided on a T&M basis with Town Manager approval

- Performs highly advanced technical review of residential and commercial construction documents for compliance with the Florida Building, Florida Accessibility Code, and federal/state/local ordinances, standards, policies, and laws.
- Completes permit reviews in a timely manner.
- Assists with inter/intra-department reviews prior to the issuance of permits.
- Engages in communications between the public, architects, engineers, contractor, Town staff and officials to explain codes and resolve code issues related to construction plans.
- Verifies code compliance of construction drawings prior to approval of drawings necessary for issuance of permits.
- Attends preconstruction and predevelopment meetings with contractors, developers, owners, architects, engineers and Town staff.
- Educates, trains, directs, and provides technical leadership or guidance to both design consultants and Town staff.
- Performs other duties as assigned, including cross training with the Building Official.

Basic Qualifications

- High school diploma or equivalent and ICC Plans Examiner Certification

- Minimum of four (4) years as a building inspector, contractor, or plans examiner that includes one (1) or more years performing commercial or educational plans review, or completion of one (1) year of training to perform advanced commercial examiner tasks.
- Knowledge of and ability to apply applicable standards of the Florida Building Code and Florida Accessibility Code.
- Experience reviewing construction, plumbing, electrical and mechanical plans with related regulations.
- Knowledge of the methods and practices involved in the construction of educational facilities and related standard testing methods.
- Ability to read and interpret complex building drawings and related documents to recognize code violations, solve problems and recommend solutions.
- Ability to communicate accurate and understandable construction design information relating to codes with architects, engineers, contractors, and school district staff.
- Ability to establish and maintain effective working relationships with contractors, builders, Town staff, city and county officials and the general public.

Preferred Qualifications

- State of Florida Commercial Plans Examiner licenses to review all plans associated with new residential and commercial construction and any manner of remodel or retrofit.
- Experience with the electronic plans software; iWorQ permitting software package and digital plan review platforms.
- Knowledge of and ability to interpret Federal Emergency Management Agency (FEMA) and local flood regulations and ordinances.

APPENDIX B – COMPENSATION

Compensation by Owner to Contractor will be as follows:

1. Contractor shall provide the Services as described in Appendix A on an annual lump sum basis.

Year One lump sum price is **\$538,535** (Five Hundred Thirty-Eight Thousand Five Hundred Thirty-Five Dollars). INCORRECT ASSUMPTION FROM B. VOSE

2. The Parties agree that good faith negotiations resulting in mutual agreement on an annual lump sum adjustment is the preferred methodology.
3. In the event Contractor and Owner fail to agree thirty (30) days prior to the annual renewal date of this Agreement, the lump sum compensation amount will be adjusted according to the adjustment formula denoted below:

$$AF = [((ECI) \times .70) + ((CPI) \times .30)] + 1.0$$

AF - Adjustment Formula

CPI = The twelve-month percent change (from June of the prior year to June of the current year) in the Consumer Price Index for All Urban Consumers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUUR000SA0.

ECI = The twelve-month percent change (from the second quarter of the prior year to the second quarter in the current year) in the Employment Cost Index for Total Compensation for Civilians Workers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series Id: CIU1010000000000A.

4. Upon each Agreement year renegotiation, Contractor shall continue to invoice Owner at the previous amount until the new Agreement year price is agreed upon or determined by the adjustment formula. Upon written agreement of the Parties as to the new Agreement year price, Contractor shall issue an invoice retroactively adjusting the previous lump sum price.
5. Additional permit reviews or other services provided under this Agreement shall be provided on a Time & Materials basis and invoiced monthly as the services may occur, but only if requested in writing by the Town Manager.

1. **Request:**

Meeting Date: March 18, 2024

Approval of a Supplemental Task Authorization to update the Land Development Code (LDC) as required to make the LDC consistent with the proposed Comprehensive Plan.

Why the action is necessary:

Updates the Fort Myers Beach Land Development Code

What the action accomplishes:

Approve the proposed scope and contract to update the Land Development Code.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

The Comprehensive Plan update is approaching completion. Completing an update to the Land Development Code is the next step to ensure that the Town's regulations are compliant with the updated Comprehensive Plan.

Attachments:

1. STA 11 - LDC Updates

Financial Impact:

unknown

6. **Alternative Action**

7. **Management Recommendations:**

Approve the scope and contract for the Land Development Code update.

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/13/2024
Approved - 3/13/2024
Approved - 3/13/2024
Final Approval - 3/13/2024

X Supplemental Task Authorization NO.: STA # 11

CONTRACT/PROJECT NAME: Land Development Code Updates

CONSULTANT: Axis Infrastructure PROJECT NO.: _____

SOLICIT NO.: _____ CONTRACT NO.: RFQ-20-22-AD_

REQUESTED BY: Andrew Hyatt, Town Manager DATE OF REQUEST: 03/15/2024

EXHIBIT "A"	SCOPE OF PROFESSIONAL SERVICE:	DATED: <u>March 15, 2024</u>
EXHIBIT "B"	COMPENSATION & METHOD OF PAYMENT:	DATED: <u>March 15, 2024</u>
EXHIBIT "C"	TIME AND SCHEDULE OF PERFORMANCE:	DATED: <u>March 15, 2024</u>
EXHIBIT "D"	CONSULTANT'S/PROVIDER'S ASSOCIATED SUB-CONSULTANT(S)/SUB-CONTRACTORS:	DATED: <u>March 15, 2024</u>

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

Land Development Code Updates

Overview

STA NO. 11: Land Development Code Updates

Scope of Work

This contract will result in an updated Land Development Code (LDC), meant to supersede the present LDC that applies to the Town of Fort Myers Beach. The Town desires an innovative and adaptive approach to achieve an attractive, competitive, and sustainable LDC. The new LDC should accomplish the following. This is not an exhaustive list and is in no order of importance:

- Encourage creative and efficient development and redevelopment;
- Address transportation constraints, capitalize on existing infrastructure, and incorporate forwardlooking parking and complete street standards;
- Creating standards to protect and beautify corridor and gateway areas in the form of development standards;
- Eliminate duplicated and/or conflicting LDC provisions and standards;
- Be easy to read and understandable for a wider audience including citizens, staff, developers, businesses, and elected and appointed officials;
- Be simpler, flexible, and more easily administered by staff;
- Illustrated with graphics depicting the requirements, recommendations, and concepts detailed in the LDC, where appropriate;
- Incorporate innovative and creative approaches to land-use regulations;
- Incorporate lasting design principles and best planning practices to improve citizens' quality of life;
- Prepare an LDC that will clearly define the expectations of the Town, in regard to appearance, quality, density of development;
- Ensure compliance of the LDC with all applicable state and federal regulations, especially related to environmental protection;
- Consultant would work with a staff review team to ensure cross discipline consistency;
- Consultant would act as facilitator with a stakeholder group that includes representatives of the Town's residents, business community and other's as directed by the Town Council or Administration;
- Consultant would provide all meeting materials, drafts, and final drafts in electronic format to the Town in Word and PDF versions for reproduction at meetings and printing of the final LDC ;
- The Town of Fort Myers Beach shall retain ownership of all data generated;

Public Engagement

Attend workshops and Council or LPA meetings to cooperatively develop regulations with elected and appointed officials, staff, the development community, and the citizens of Fort Myers Beach. The following meetings will be coordinated by the Consultant and Town staff:

One (1) advertised workshop with the Town Council and one (1) advertised workshop with the Local Planning Agency to define the expectations for the LDC; two (2) citizen engagement workshops to educate current LDC status and to gather citizen/stakeholder comments about priority topics. These community workshops may cover separate topics to provide a full spectrum of issues through this process.

A virtual town hall presentation and continued presence, sharing of information, and preference polling will be utilized to engage public that does not have physical access to the meetings.

A total of five (5) workshops.

Once the LDC is in draft form, one (1) public hearing with the Town of Fort Myers Beach Local Planning Agency to recommend the LDC to the Town Council; and two (2) advertised public hearings with the Town Council.

A total of three (3) public hearings.

The responsibility for meeting public notice requirements, including mailed notices, advertisements, and signs as appropriate, for community workshops and public hearings related to this project shall lie with the Town. The Town shall be responsible for preparation, materials, and mailing costs for mailed notices. The Consultant shall assist with quality assurance, if necessary. The Town shall also be responsible for scheduling all public meetings and reserving appropriate meeting venues. The Consultant may propose to enhance the public notification measures undertaken by the Town with the use of newsletters or other means, which will be published and distributed by the Town. The Town shall be responsible for sign-in of persons attending each workshop on forms provided by the Town.

LDC Revisions

The Consultant is responsible for the following sections of the LDC, which are in Appendix A of the Code of Ordinances:

Chapter 1 General Provisions: Review with the Town's Attorney and Administrative Team. Provide feedback on any conflicts with the remaining LDC, but not responsible for the legal compliance of this chapter.

Chapter 2 Administration: Review with the Town's Attorney and Administrative Team. Provide feedback on any conflicts with the remaining LDC, but not responsible for the legal compliance of this chapter. Definitions will be a critical part of these updates and the Consultant will review and provide necessary edits based on revisions throughout other chapters of the LDC.

Chapter 6 Maintenance Codes, Building Codes, and Coastal Regulations: This chapter is currently in draft form to be updated by others. The Consultant will monitor changes in state or federal law throughout the life of the contract to help accommodate any changes that may be necessary and can be included with the LDC adoption process.

Chapter 10 Development Orders and Engineering Standards: The Consultant will coordinate with Town staff and any engineering Consultants that the Town currently uses for design or operations to ensure consistency between LDC requirements and standard operating procedures.

Chapter 14 Environmental and Natural Resources: The Consultant will coordinate with Town staff that are responsible for implementing this chapter. Several items in the chapter are related to vendors and business operations on the beach. The Consultant will coordinate with but not responsible for any substantial changes to this chapter. The Town can choose to include changes to this chapter during the LDC adoption process or provide a separate process to ensure the remaining revisions are not held up.

Chapter 26 Marine Facilities: The Consultant will review and coordinate discussions on past efforts to revise this chapter to gauge interest in revisions. However, previous efforts resulted in minimal changes due to concerns over changes to commercial and residential uses.

Chapter 27 Personal Watercraft and Parasailing: No major changes are expected due to previous conversations about the verbiage that is currently adopted. Any requested changes by staff or the Town Council can be included by the Consultant to ensure timely adoption.

Chapter 30 Signs: This chapter has recently been updated and will only require review to ensure compliance with changes in state or federal law, along with consistency in language depending on revisions to the other chapters of the LDC.

Chapter 34 Zoning Districts, Design Standards and Non-Conformities: This chapter is expected to be the focus of many of the revisions to the LDC.

Fee Schedule

Project Management and Coordination	\$14,790
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Public Engagement	\$15,800
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Draft LDC Revisions	\$42,680
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Final LDC Revisions and Adoption	\$26,200
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<i>Sub Total Cost (Lump Sum)</i>	<i>\$99,470</i>
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Estimated Expenses	\$4,000
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Additional Services (per request only)

Additional Workshops	\$3,000
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Additional Public Hearings	\$800
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COMPENSATION AND METHOD OF PAYMENT FORLand Development Code UpdatesSection 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
#1	Land Development Code Updates	\$103,470.	NTE	WIPP
TOTAL (Unless list is continued on next page)		\$103,470	NTE	

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated September 27, 2021, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto September 27, 2021 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: March 15, 2024

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR
Land Development Code Updates

Consultant or Sub-consultant Name: Axis Infrastructure
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: March 15, 2024

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR
Land Development Code Updates

CONSULTANT OR SUB-CONSULTANT NAME: Axis Infrastructure
(A separate Attachment No. 2 should be included for each Sub-Consultant)

[illegible]

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: March 15, 2024

TIME AND SCHEDULE OF PERFORMANCE FOR

Land Development Code Updates

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
#1	Land Development Code Updates	365	365

EXHIBIT D

Date: March 15, 2024

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S) FOR

Land Development Code Updates

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
	TBD					

1. **Request:**

Meeting Date: March 18, 2024

First Reading and Public Hearing of an ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE IV OF CHAPTER 6 OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH TO 1) REQUIRE ALL MANUFACTURED HOMES INSTALLED OR REPLACED IN SPECIAL FLOOD HAZARD AREAS TO BE ELEVATED AT OR ABOVE AT LEAST THE BASE FLOOD ELEVATION PLUS 1 FOOT; 2) ADOPT THE NOVEMBER 17, 2022 FLOOD INSURANCE STUDY FOR LEE COUNTY FLORIDA AND INCORPORATED AREAS; 3) CHANGE TO SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE DETERMINATIONS; AND 4) AMEND THE DEFINITIONS OF MARKET VALUE AND SUBSTANTIAL DAMAGE, IN ORDER TO COMPLY WITH RECENT CHANGES TO THE COMMUNITY RATING SYSTEM NECESSARY TO RETAIN A CLASS 8, WHICH ASSIST THE TOWN IN MAINTAINING ITS CLASS 5 COMMUNITY RATING SYSTEM DESIGNATION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on April 1, 2024 at 9:00 AM

Why the action is necessary:

Updates flood ordinance to comply with FEMA requirements

What the action accomplishes:

Approval of the ordinance will satisfy requirements from FEMA, the state, and Community Rating System requirements for Class 8.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Kristin Schumacher, Flood Plain
Supervisor

5. **Background:**

1) Require all manufactured homes installed or replaced in special flood hazard areas to be elevated at or above at least the Base Flood Elevation plus 1 foot; 2) Adopt the November 17, 2022 Flood Insurance Study for Lee County Florida and Incorporated areas; 3) change to substantial improvement and substantial damage determinations; and 4) amend the definitions of market value and substantial damage, in order to comply with recent changes to the Community Rating System, necessary to retain Class 8 rating, which assists the Town in maintaining its class 5 Community Rating System designation.

Attachments:

1. 24-03, Flood Ordinance Update
2. 24-03, Business Impact Estimate

Financial Impact:

No known financial impact

6. **Alternative Action**

These amendments are required by the state and FEMA. The requirement to elevate mobile homes is to satisfy the CRS Class 8 requirement.

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Kristin Schumacher, Flood Plain Supervisor
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/22/2024
Approved - 2/23/2024
Approved - 2/27/2024
Approved - 3/6/2024
Final Approval - 3/6/2024

ORDINANCE NO. 24-03

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE IV OF CHAPTER 6 OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH TO 1) REQUIRE ALL MANUFACTURED HOMES INSTALLED OR REPLACED IN SPECIAL FLOOD HAZARD AREAS TO BE ELEVATED AT OR ABOVE AT LEAST THE BASE FLOOD ELEVATION PLUS 1 FOOT; 2) ADOPT THE NOVEMBER 17, 2022 FLOOD INSURANCE STUDY FOR LEE COUNTY FLORIDA AND INCORPORATED AREAS; 3) CHANGE TO SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE DETERMINATIONS; AND 4) AMEND THE DEFINITIONS OF MARKET VALUE AND SUBSTANTIAL DAMAGE, IN ORDER TO COMPLY WITH RECENT CHANGES TO THE COMMUNITY RATING SYSTEM NECESSARY TO RETAIN A CLASS 8, WHICH ASSISTS THE TOWN IN MAINTAINING ITS CLASS 5 COMMUNITY RATING SYSTEM DESIGNATION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND 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, the Town of Fort Myers Beach participates in the National Flood Insurance Program (“NFIP”) and participates in the NFIP’s Community Rating System (“CRS”), a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements; and,

WHEREAS, the Town of Fort Myers Beach achieved a CRS rating of Class 5, making citizens who purchase NFIP flood insurance policies eligible for premium discounts; and

WHEREAS, in 2020, the NFIP Community Rating System established certain minimum prerequisites for communities to qualify for or maintain class ratings of Class 8 or lower; and

WHEREAS, to satisfy the prerequisite and for the Town of Fort Myers Beach to maintain the current CRS rating, changes were needed to the existing ordinance, including but not limited to a requirement that all manufactured homes installed or replaced in special flood hazard areas must be elevated at or above at least the base flood elevation plus 1 foot; and

WHEREAS, Sections 553.73(4) and (5), Florida Statutes authorizes a local government to make amendments to its building codes as needed, and specifically as may be needed to further implement the National Flood Insurance Program; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on the 13th day of February, 2024, at which time 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, and made a finding of consistency with the Ft. Myers Beach Comprehensive Plan and Land Development Code and thereafter voted 7 to 0, to recommend approval of the requested ordinance amending Article IV of Chapter 6 of the Land Development Code to the Town Council; and

WHEREAS, on the ____ day of _____, 2024, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend Article IV of Chapter 6 of the Land Development Code, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the ____ day of _____, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the proposed ordinance was published in the _____ on the ____ day of _____, 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the ____ day of _____, 2024, the Town Council held a second reading of the proposed Ordinance; and

WHEREAS, the Town Council determined by a vote of ____ to ____ that adoption of the Ordinance to amend the floodplain management regulations to better protect owners and occupants of manufactured homes and to continue participating in the Community Rating System at the current class rating, is in the best interest of the public.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:¹

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

Section 2. Article II of Chapter 6 of the Land Development Code of the Town of Fort Myers Beach entitled "Building Codes" is hereby amended as shown in Exhibit A.

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

Section 3. Article IV of Chapter 6 of the Land Development Code of the Town of Fort Myers Beach entitled “Floodplain Regulations” is hereby amended as shown in Exhibit B.

Section 4. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Land Development Code, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

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 shall become effective upon adoption by the Town Council. The City Clerk shall provide a copy of the Ordinance amending the Building Code to the Florida Building Commission within 30 days of adoption.

The forgoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Karen Woodson, Council Member	_____
Scott Safford, Council Member	_____

ADOPTED this ____ day of _____, 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, Town Attorney

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

ARTICLE IV. - FLOODPLAIN REGULATIONS

DIVISION 1. - GENERAL

Sec. 6-401. - Title.

These regulations shall be known as the Floodplain Management Ordinance of Fort Myers Beach, hereinafter referred to as "this article."

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-402. - Scope.

The provisions of this article apply to all development that is wholly within or partially within any flood hazard area, including but not limited to, the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the Florida Building Code; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-403. - Intent.

The purposes of this article and the flood load and flood-resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
- (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
- (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development that may increase flood damage or erosion potential;
- (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
- (5) Minimize damage to public and private facilities and utilities;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
- (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and

- (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-404. - Coordination with the Florida Building Code.

This article is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-405. - Warning.

The degree of flood protection required by this article and the Florida Building Code, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring the town to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this article.

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-406. - Disclaimer of liability.

This article will not create liability on the part of Town Council of the Town of Fort Myers Beach or by any officer or employee thereof for any flood damage that results from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-407—6-410. - Reserved.

DIVISION 2. - APPLICABILITY

Sec. 6-411. - General.

Where there is a conflict between a general requirement and a specific requirement, the specific requirement will be applicable.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-412. - Areas to which this article applies.

This article shall apply to all flood hazard areas within the Town of Fort Myers Beach, as established in section 6-413.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-413. - Basis for establishing flood hazard areas.

The Flood Insurance Study for Lee County Florida and Incorporated Areas, dated ~~August 28, 2008~~ November 17, 2022, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this article and serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Fort Myers Beach Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Florida.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-414. - Submission of additional data to establish flood hazard areas.

To establish flood hazard areas and base flood elevations, pursuant to division 5 of this article, the floodplain administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the town indicates that ground elevations:

- (1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area will be considered as flood hazard area and subject to the requirements of this article and, as applicable, the requirements of the Florida Building Code.
- (2) Are above the closest applicable base flood elevation, the area will be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the special flood hazard area.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-415. - Other laws.

The provisions of this article will not be deemed to nullify any provisions of local, state or federal law.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-416. - Abrogation and greater restrictions.

This article supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances, including but not limited to, land development regulations, zoning ordinances, stormwater management

regulations, or the Florida Building Code. In the event of a conflict between this article and any other ordinance, the more restrictive will govern. This article will not impair any deed restriction, covenant or easement, but any land that is subject to such interests will also be governed by this article.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-417. - Interpretation.

In the interpretation and application of this article, all provisions will be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-418—6-420. - Reserved.

DIVISION 3. - DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

Sec. 6-421. - Designation.

The town manager is designated as the floodplain administrator. The floodplain administrator may delegate performance of certain duties to other employees.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-422. - General.

The floodplain administrator is authorized and directed to administer and enforce the provisions of this article. The floodplain administrator will have the authority to render interpretations of this article consistent with the intent and purpose of this article and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures will not have the effect of waiving requirements specifically provided in this article without the granting of a variance pursuant to division 7 of this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-423. - Applications and permits.

The floodplain administrator, in coordination with other pertinent offices of the town, will:

- (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
- (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this article;

- (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination will have the opportunity to appeal the interpretation;
- (4) Provide available flood elevation and flood hazard information;
- (5) Determine whether additional flood hazard data will be obtained from other sources or will be developed by an applicant;
- (6) Review applications to determine whether proposed development will be reasonably safe from flooding;
- (7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code, when compliance with this article is demonstrated, or disapprove the same in the event of noncompliance; and
- (8) Coordinate with and provide comments to the building official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-424. - Substantial improvement and substantial damage determinations.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator, in coordination with the building official, will:

- (1) Estimate the market value or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure will be the market value before the damage occurred and before any repairs are made; any appraisal used for the purposes of substantial improvement/substantial damage determinations must be current within one year of work commencing;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; ~~and for proposed work to repair damage caused by flooding, the determination requires evaluation of previous permits issued to repair flood-related damage as specified in the definition of "substantial damage;" and~~

- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood-resistant construction requirements of the Florida Building Code and this article is required.

(Ord. No. 16-02, § 2, 8-8-2016; Ord. No. 17-09, § 2, 6-19-2017)

Sec. 6-425. - Modifications of the strict application of the requirements of the Florida Building Code.

The floodplain administrator will review requests submitted to the building official that seek approval to modify the strict application of the flood load and flood-resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to division 7 of this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-426. - Notices and orders.

The floodplain administrator will coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-427. - Inspections.

The floodplain administrator will make the required inspections as specified in division 6 of this article for development that is not subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. The floodplain administrator will inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-428. - Other duties of the floodplain administrator.

The floodplain administrator will have other duties, including but not limited to:

- (1) Establish, in coordination with the building official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to section 6-424 of this article;
- (2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
- (3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood

elevations, flood hazard area boundaries, or floodway designations; such submissions will be made within six months of such data becoming available;

- (4) Review required design certifications and documentation of elevations specified by this article and the Florida Building Code to determine that such certifications and documentations are complete;
- (5) Notify the Federal Emergency Management Agency when the corporate boundaries of the Town of Fort Myers Beach are modified; and
- (6) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-429. - Floodplain management records.

Regardless of any limitation on the period required for retention of public records, the floodplain administrator will maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this article and the flood-resistant construction requirements of the Florida Building Code, including Flood Insurance Rate Maps; letters of map change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this article; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood-carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and, records of enforcement actions taken pursuant to this article and the flood-resistant construction requirements of the Florida Building Code. These records are available for public inspection at the Town of Fort Myers Beach Town Hall.

(Ord. No. 16-02, § 2, 8-8-2016)

Secs 6-430—6-440. - Reserved.

DIVISION 4. - PERMITS

Sec. 6-441. - Permits required.

Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this article, including buildings, structures and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area must first make application to the floodplain administrator, and the building official, if applicable, and must obtain the required permits and approvals. No such permit or approval will

be issued until compliance with the requirements of this article and all other applicable codes and regulations has been satisfied.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-442. - Floodplain development permits or approvals.

Floodplain development permits or approvals will be issued pursuant to this article for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the floodplain administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-443. - Buildings, structures and facilities exempt from the Florida Building Code.

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals will be required for the following buildings, structures and facilities that are exempt from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this article:

- (1) Railroads and ancillary facilities associated with the railroad.
- (2) Nonresidential farm buildings on farms, as provided in F.S. § 604.50.
- (3) Temporary buildings or sheds used exclusively for construction purposes.
- (4) Mobile or modular structures used as temporary offices.
- (5) Those structures or facilities of electric utilities, as defined in F.S. § 366.02, which are directly involved in the generation, transmission or distribution of electricity.
- (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
- (7) Family mausoleums not exceeding 250 square feet in area that are prefabricated and assembled on-site or preassembled and delivered on-site and have walls, roofs, and a floor constructed of granite, marble or reinforced concrete.
- (8) Temporary housing provided by the department of corrections to any prisoner in the state correctional system.
- (9) Structures identified in F.S. § 553.73(10)(k), are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-444. - Application for a permit or approval.

To obtain a floodplain development permit or approval the applicant must first file an application in writing on a form furnished by the town. The information provided must:

- (1) Identify and describe the development to be covered by the permit or approval.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan or construction documents as specified in division 5 of this article.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Give such other data and information as required by the floodplain administrator.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-445. - Validity of permit or approval.

The issuance of a floodplain development permit or approval pursuant to this article must not be construed to be a permit for, or approval of, any violation of this article, the Florida Building Codes, or any other ordinance of the town. The issuance of permits based on submitted applications, construction documents, and information will not prevent the floodplain administrator from requiring the correction of errors and omissions.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-446. - Expiration.

A floodplain development permit or approval will become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each must be requested in writing and justifiable cause must be demonstrated.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-447. - Suspension or revocation.

The floodplain administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this article or any other ordinance, regulation or requirement of the town.

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-448. - Other permits required.

Floodplain development permits and building permits must include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

- (1) The South Florida Water Management District; F.S. § 373.036.
- (2) Florida Department of Health for on-site sewage treatment and disposal systems; F.S. § 381.0065, and Chapter 64E-6, F.A.C.
- (3) Florida Department of Environmental Protection for construction, reconstruction, changes or physical activities for shore protection or other activities seaward of the Coastal Construction Control Line; F.S. § 161.141.
- (4) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; F.S. § 161.055.
- (5) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
- (6) Federal permits and approvals.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-449, 6-450. - Reserved.

DIVISION 5. - SITE PLANS AND CONSTRUCTION DOCUMENTS

Sec. 6-451. - Information for development in flood hazard areas.

The site plan or construction documents for any development subject to the requirements of this article must be drawn to scale and must include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zones, base flood elevations, and ground elevations, if necessary for review of the proposed development.
- (2) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings must be located landward of the reach of mean high tide or the 1978 Coastal Construction Control Line, whichever is further inland.
- (3) Location, extent, amount, and proposed final grades of any filling, grading or excavation.
- (4) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.

- (5) Delineation of the coastal construction control line or notation that the site is seaward of the coastal construction control line, if applicable.
- (6) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.
- (7) Existing and proposed alignment of any proposed alteration of a watercourse.

The floodplain administrator is authorized to waive the submission of site plans, construction documents, and other data required by this article but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this article.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-452. - Additional analyses and certifications.

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant must have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

- (1) An operation and maintenance plan when dry floodproofing is proposed, to include:
 - a. Identification of party responsible for maintenance and installation of the flood barriers that will protect wall and door openings and where the flood barriers will be stored when not in use.
 - b. Realistic estimate of the manpower, time and equipment required for installation.
 - c. Binding requirement for present and future owners to conduct a test installation before May 31 of each year of all flood barriers, with ten days' advance written notice provided to the floodplain administrator to witness this test.
 - d. Binding requirement that upon completion of each annual test, a written report will be submitted by the owners to the floodplain administrator within 30 days to document the results of the test and set forth any corrective measures that may be necessary, including proposed revisions to the operation and maintenance plan as to responsibility for maintenance, installation, and storage of flood barriers.
- (2) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis that demonstrates the proposed alteration will not increase the potential for flood damage.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-453. - Submission of additional data.

When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a letter of map change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such

purposes. The analyses must be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees will be the responsibility of the applicant.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-454—6-460. - Reserved.

DIVISION 6. - INSPECTIONS

Sec. 6-461. - General.

Development for which a floodplain development permit or approval is required will be subject to inspection.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-462. - Development other than buildings and structures.

The floodplain administrator will inspect all development to determine compliance with the requirements of this article and the conditions of issued floodplain development permits or approvals.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-463. - Buildings, structures and facilities exempt from the Florida Building Code.

The floodplain administrator will inspect buildings, structures and facilities exempt from the Florida Building Code to determine compliance with the requirements of this division and the conditions of issued floodplain development permits or approvals.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-464. - Buildings, structures and facilities exempt from the Florida Building Code, Lowest Floor Inspection.

Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the Florida Building Code, or the owner's authorized agent, must submit to the floodplain administrator the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-465. - Buildings, structures and facilities exempt from the Florida Building Code, Final Inspection.

As part of the final inspection, the owner or owner's authorized agent must submit to the floodplain administrator a final certification of elevation of the lowest floor or final documentation

of the height of the lowest floor above the highest adjacent grade; such certifications and documentations must be prepared as specified in section 6-464.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-466. - Manufactured homes.

The floodplain administrator will inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this article and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor must be submitted to the floodplain administrator.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-467—6-470. - Reserved.

DIVISION 7. - VARIANCES AND APPEALS

Sec. 6-471. - General.

The town council will hear and decide on requests for appeals and requests for variances from the strict application of this article. Pursuant to F.S. § 553.73(5), the town council will hear and decide on requests for appeals and requests for variances from the strict application of the flood-resistant construction requirements of the Florida Building Code. This section does not apply to section 3109 of the Florida Building Code, Building.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-472. - Appeals.

The town council will hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this article. Any person aggrieved by the decision may appeal such decision to the circuit court, as provided by Florida Statutes.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-473. - Limitations on authority to grant variances.

The town council will base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in section 6-476, the conditions of issuance set forth in section 6-477, and the comments and recommendations of the floodplain administrator and the building official. The town council has the right to attach such conditions as it deems necessary to further the purposes and objectives of this article.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-474. - Historic buildings.

A variance is authorized to be issued for the repair, improvement or rehabilitation of a historic building that is determined eligible for the exception to the flood-resistant construction requirements of the Florida Building Code, Existing Building, chapter 12 Historic Buildings, upon a determination that the proposed repair, improvement or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance will not be granted and the building and any repair, improvement and rehabilitation will be subject to the requirements of the Florida Building Code.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-475. - Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in division 9 of this article, provided the variance meets the requirements of section 6-473, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-476. - Considerations for issuance of variances.

In reviewing requests for variances, the town council will consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this article, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the town;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;

- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-477. - Conditions for issuance of variances.

Variances may be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this article or the required elevation standards;
- (2) Determination by the town council that:
 - a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
 - c. The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (3) Receipt of a signed statement by the applicant that the variance, if granted, must be recorded in the office of the clerk of the court in such a manner that it appears in the chain of title of the affected parcel of land; and
- (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the floodplain administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-478—6-480. - Reserved.

DIVISION 8. - VIOLATIONS

Sec. 6-481. - Violations.

Any development that is not within the scope of the Florida Building Code but regulated by this article, which is: (a) performed without an issued permit, (b) in conflict with an issued permit, or (c) does not fully comply with this article, will be deemed a violation of this article. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this article or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-482. - Authority.

For development that is not within the scope of the Florida Building Code, but regulated by this article and determined to be a violation, the floodplain administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-483. - Unlawful continuance.

Any person who continues any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, will be subject to penalties as prescribed by law.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-484—6-490. - Reserved.

DIVISION 9. - DEFINITIONS

Sec. 6-491. - Scope.

Unless otherwise expressly stated, the following words and terms will, for the purposes of this article, have the meanings shown in this division.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-492. - Terms defined in the Florida Building Code.

Where terms are not defined in this division and are defined in the Florida Building Code, such terms have the meanings ascribed to them in that code.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-493. - Terms not defined.

Where terms are not defined in this division or the Florida Building Code, such terms have ordinarily accepted meanings such as the context implies.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-494. - Definitions.

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification that may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the floodplain administrator's interpretation of any provision of this article.

ASCE 24. A standard titled Flood-Resistant Design and Construction that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a one-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 202.] The base flood is commonly referred to as the "100-year flood" or the "one-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 202.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 202; see "Basement (for flood loads)".]

Coastal construction control line. The line established by the State of Florida pursuant to F.S. § 161.053, and recorded in the official records of the community, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves or other predictable weather conditions.

Coastal high hazard area. A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V.

Design flood. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 202.]

- (1) Area with a floodplain subject to a one-percent or greater chance of flooding in any year; or
- (2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. [Also defined in FBC, B, Section 202.]

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

Encroachment. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which the "start of construction" commenced before August 31, 1984. [Also defined in FBC, B, Section 202.]

~~*Existing manufactured home park or subdivision.* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before August 31, 1984.~~

~~*Expansion to an existing manufactured home park or subdivision.* The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).~~

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 202.]

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 202.]

Flood hazard area. The greater of the following two areas: [Also defined in FBC, B, Section 202.]

- (1) The area within a floodplain subject to a one-percent or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of Fort Myers Beach on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 202.]

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 202.]

Floodplain administrator. The office or position designated and charged with the administration and enforcement of this article (may be referred to as the floodplain manager).

Floodplain development permit or approval. An official document or certificate issued by the town, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and determined to be compliant with this article.

Florida Building Code (FBC). The family of codes adopted by the Florida Building Commission, including: Florida Building Code, Building; Florida Building Code, Residential; Florida Building Code, Existing Building; Florida Building Code, Mechanical; Florida Building Code, Plumbing; Florida Building Code, Fuel Gas.

Functionally dependent use. A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, chapter 12 Historic Buildings.

Letter of map change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of map change include:

- (1) Letter of map amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (2) Letter of map revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (3) Letter of map revision based on fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (4) Conditional letter of map revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a letter of map revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds gross vehicular weight rating or less that has a vehicular curb weight of 6,000 pounds or less and a basic vehicle frontal area of 45 square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage, provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24. [Also defined in FBC, B, Section 202.]

Mangrove stand. An assemblage of mangrove trees, which are mostly low trees noted for copious development of interlacing adventitious roots above the ground, which contains one or more of the following species: black mangrove (*Avicennia germinans*), red mangrove (*Rhizophora mangle*), white mangrove (*Languncularis racemosa*), and buttonwood (*Conocarpus erecta*).

Manufactured home. A structure, transportable in one or more sections, which is eight feet or more in width and greater than 400 square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value. ~~The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this article, the term refers to the market~~ The value of buildings and structures, excluding the land and other improvements on the parcel. Market value ~~may be established by a qualified independent appraiser, is the actual cash value (in-kind replacement cost depreciated for age, wear and tear, neglect, and quality of construction) determined by a qualified independent appraiser, or tax assessment value adjusted by a factor provided by the County Tax Assessor upward by 20 percent.~~

~~Any proposed value submitted via a private appraisal that exceeds the property appraiser's valuation by more than 35 percent may be subject to peer review by a qualified local appraiser or submittal of a new independent appraisal, with the full cost of the review or new appraisal paid by the applicant.~~

New construction. For the purposes of administration of this article and the flood-resistant construction requirements of the Florida Building Code, structures for which the "start of construction" commenced on or after August 31, 1984 and includes any subsequent improvements to such structures.

~~*New manufactured home park or subdivision.* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after August 31, 1984.~~

Park trailer. A transportable unit that has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in F.S. § 320.01.]

Recreational vehicle. A vehicle, including a park trailer, which is: [See F.S. § 320.01.]

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Sand dunes. Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Special flood hazard area. An area in the floodplain subject to a one- percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]

Start of construction. The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 202.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. ~~The term also includes flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.~~ [Also defined in FBC, B Section 202.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 202.]

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.

Variance. A grant of relief from the requirements of this article, or the flood-resistant construction requirements of the Florida Building Code, which permits construction in a manner that would not otherwise be permitted by this ordinance or the Florida Building Code.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016; Ord. No. 17-09, § 2, 6-19-2017)

Secs. 6-495—6-500. - Reserved.

DIVISION 10. - FLOOD-RESISTANT DEVELOPMENT

Subdivision I. - Buildings and Structures

Sec. 6-501. - Design and construction of buildings, structures and facilities exempt from the Florida Building Code.

Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of division 10, subdivision VII.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-502. - Buildings and structures seaward of the coastal construction control line.

If extending, in whole or in part, seaward of the coastal construction control line and also located, in whole or in part, in a flood hazard area:

- (1) Buildings and structures must be designed and constructed to comply with the more restrictive applicable requirements of the Florida Building Code, Building, Section 3109 and Section 1612 or Florida Building Code, Residential, Section R322.
- (2) Minor structures and non-habitable major structures as defined in F.S. § 161.54, must be designed and constructed to comply with the intent and applicable provisions of this article and ASCE 24.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision II. - Subdivisions

Sec. 6-503. - Minimum requirements.

Subdivision proposals, including proposals for manufactured home parks and subdivisions, will be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-504. - Subdivision plats.

Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following will be required:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, must be shown on preliminary plats; and
- (2) Compliance with the site improvement and utilities requirements of division 10, subdivision III.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision III. - Site Improvements, Utilities and Limitations

Sec. 6-505. - Minimum requirements.

All proposed new development will be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-506. - Sanitary sewage facilities.

All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems must be designed in accordance with the standards for on-site sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24, Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into floodwaters, and impairment of the facilities and systems.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-507. - Water supply facilities.

All new and replacement water supply facilities must be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24, Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-508. - Limitations on placement of fill.

Subject to the limitations of this article, fill must be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill must comply with the requirements of the Florida Building Code.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-509. - Limitations on sites in coastal high hazard areas (Zone V).

In coastal high hazard areas, alteration of sand dunes and mangrove stands will be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by subsection 6-452(1) demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures must comply with subsection 6-529(3).

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision IV. - Manufactured Homes

Sec. 6-510. - General.

All manufactured homes installed in flood hazard areas must be installed by an installer that is licensed pursuant to F.S. § 320.8249, and must comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this article. If located seaward of the coastal construction control line, all manufactured homes must comply with the more restrictive of the applicable requirements.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-511. - Limitations on installations in coastal high hazard areas (Zone V).

New installations of manufactured homes shall not be permitted in coastal high hazard areas (Zone V).

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-512. - Foundations.

All new manufactured homes and replacement manufactured homes installed in flood hazard areas must be installed on permanent, reinforced foundations that:

- (1) In flood hazard areas (Zone A) other than coastal high hazard areas, are designed in accordance with the foundation requirements of the Florida Building Code, Residential, Section R322.2 and this article. ~~Foundations for manufactured homes subject to section 6-516 are permitted to be reinforced piers or other foundation elements of at least equivalent strength.~~
- (2) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the Florida Building Code, Residential, Section R322.3 and this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-513. - Anchoring.

All new manufactured homes and replacement manufactured homes must be installed using methods and practices that minimize flood damage and must be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-514. - Elevation.

All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the base flood elevation plus one foot. ~~Manufactured homes that are placed, replaced or substantially improved must comply with sections 6-515 or 6-516, as applicable.~~

(Ord. No. 16-02, § 2, 8-8-2016)

~~Sec. 6-515. — General elevation requirement.~~

~~Unless subject to the requirements of section 6-516, all manufactured homes that are placed, replaced or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; or (b) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential, Section R322.2 (Zone A) or Section R322.3 (Zone V).~~

(Ord. No. 16-02, § 2, 8-8-2016)

~~Sec. 6-516. — Elevation requirement for certain existing manufactured home parks and subdivisions.~~

~~Manufactured homes that are not subject to section 6-515, including manufactured homes that are placed, replaced or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, must be elevated such that either the:~~

- ~~(1) Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential, Section R322.2 (Zone A) or Section R322.3 (Zone V); or~~
- ~~(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.~~

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-515. Sec. 6-517. - Enclosures.

Enclosed areas below elevated manufactured homes must comply with the requirements of the Florida Building Code, Residential, Sections R322.2 or R322.3 for such enclosed areas, as applicable to the flood hazard area.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-516. Sec. 6-518. - Utility equipment.

Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing and air conditioning equipment and other service facilities, must comply with the requirements of the Florida Building Code, Residential, Section R322, as applicable to the flood hazard area.

(Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-517—6-518. - Reserved.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision V. - Recreational Vehicles and Park Trailers

Sec. 6-519. - Temporary placement.

Recreational vehicles and park trailers placed temporarily in flood hazard areas must:

- (1) Be on the site for fewer than 180 consecutive days; or
- (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-520. - Permanent placement.

Recreational vehicles and park trailers that do not meet the limitations in section 6-519 for temporary placement must meet the requirements of division 10, subdivision IV for manufactured homes.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision VI. - Tanks

Sec. 6-521. - Underground tanks.

Underground tanks in flood hazard areas must be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-522. - Above-ground tanks, not elevated.

Above-ground tanks that do not meet the elevation requirements of section 6-523 must:

- (1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.
- (2) Not be permitted in coastal high hazard areas (Zone V).

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-523. - Above-ground tanks, elevated.

Above-ground tanks in flood hazard areas must be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures must meet the foundation requirements of the applicable flood hazard area.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-524. - Tank inlets and vents.

Tank inlets, fill openings, outlets and vents must be:

- (1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

- (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision VII. - Other Development

Sec. 6-525. - General requirements for other development.

All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:

- (1) Be located and constructed to minimize flood damage;
- (2) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
- (3) Be constructed of flood damage-resistant materials; and
- (4) Have mechanical, plumbing and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-526. - Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).

In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:

- (1) Structurally independent of the foundation system of the building or structure;
- (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
- (3) Have a maximum slab thickness of not more than four inches without turned-down edges, have isolation joints at pilings and columns, and have control or construction joints in both directions spaced no more than four feet apart.

(Ord. No. 16-02, § 2, 8-8-2016; Ord. No. 17-09, § 2, 6-19-2017)

Sec. 6-527. - Decks and patios in coastal high hazard areas (Zone V).

In addition to the requirements of the Florida Building Code, in coastal high hazard areas decks and patios must be located, designed and constructed in compliance with the following:

- (1) A deck that is structurally attached to a building or structure must have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation must comply with the foundation requirements that apply to the building or structure, which must be designed to accommodate any increased loads resulting from the attached deck.
- (2) A deck or patio that is located below the design flood elevation must be structurally independent from buildings or structures and their foundation systems, and must be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.
- (3) A deck or patio that has a vertical thickness of more than 12 inches or that is constructed with more than the minimum amount of fill necessary for site drainage must not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.
- (4) A deck or patio that has a vertical thickness of 12 inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-528. - Other development in coastal high hazard areas (Zone V).

In coastal high hazard areas, development activities other than buildings and structures may be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and, if analyses prepared by qualified registered design professionals demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

- (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
- (2) Solid fences and privacy walls and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and
- (3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-529. - Nonstructural fill in coastal high hazard areas (Zone V).

In coastal high hazard areas:

- (1) Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings.
- (2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal may be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.
- (3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection, if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

(Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-530—6-600. - Reserved.



Business Impact Estimate

Proposed ordinance's title/reference:
Ordinance 24-03 Flood Ordinance Update

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☒ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

1. Summary of the proposed ordinance, (e.g. statement of the public purpose serving the public health, safety, morals and welfare):

The proposed ordinance amends the existing Section 34-3238 which applies to buildings with 50% or more damage. The amendment will allow the structure to be rebuilt with the same number of legally existing, but nonconforming units and allow some additional square footage, beyond what the code previously allowed.

¹ See Section 166.041(4)(c), Florida Statutes.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 24-03.

Ordinance 24-03 does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

The Town believes that businesses would not be impacted by this ordinance.

4. Additional information the governing body deems useful (if any):

N/A

1. **Request:**

Meeting Date: March 18, 2024

First Reading and Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 3051 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 29-46-24-W1-0120C.0100 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 April 1, 2024 at 9:00 AM

Why the action is necessary:

The convenience store use existed on property and is allowed to continue in that zoning district, however an increase in square footage of that use requires approval of a CPD. The LPA hears rezoning requests and recommends action to the Town Council.

What the action accomplishes:

Approval of the CPD allows the redevelopment of the site, with a larger convenience store than previously existed on site.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

The applicant for 3051 Estero Blvd, is requesting a rezoning from Commercial Boulevard zoning to Commercial Planned Development for the redevelopment of a 5,000 square foot convenience store. The proposed development will have an entrance on Estero Blvd, two entrances from Voorhis St, four fueling locations with canopy and an internally accessed dumpster enclosure at the rear of the property. The site previously contained a 7-Eleven convenience store with four fueling locations and a gym.

Attachments:

1. Ordinance 24-05
2. Staff Report
3. Exhibit A - MCP
4. Exhibit B - Complete application
5. Exhibit C - LPA AND TC postcard
6. business-impact-estimate

Financial Impact:

unknown

6. **Alternative Action**

Recommend denial

7. **Management Recommendations:**

Approve with conditions

8. Recommended Approval:

Kendra Rosa, Zoning Coordinator/Planner 1
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/6/2024
Approved - 3/7/2024
Approved - 3/11/2024
Approved - 3/11/2024
Final Approval - 3/11/2024

ORDINANCE 24-05

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 3051 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 29-46-24-W1-0120C.0100 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, Southland Corporation and The Neighborhood Company, owner and agents for the property owner, located at Estero Blvd., parcels generally identified as STRAP numbers 29-46-24-W1-0120C.0100 in the Town of Fort Myers Beach, filed applications to rezone the property from the Downtown Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a convenience store ; and

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

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 9, 2024; and

WHEREAS, at the February 27, 2024 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) sec. 34-85; and

WHEREAS, at the February 27, 2024 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the variance by a 6-0 vote with one member abstaining; and

WHEREAS, on March 18, 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 noticed in an appropriate publication 10 days prior to the Town Council on April 1, 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, a Business Impact Estimate has been prepared and published on the Town's website; and

WHEREAS, with the following terms, conditions, and requirements which the LPA 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 (MCP), which future development should be substantially in compliance with; and

WHEREAS, the Town Council finds that this request to rezone the property from the Downtown Zoning District to CPD with MCP with certain deviations to the Land Development Code (LDC) in order to develop a convenience store, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #1

Deviation from LDC Section 10-285 for driveway separation requirements along Estero Boulevard and Voorhis Street. The deviation would allow driveway separation to be a minimum of 97.7 feet along Estero Blvd from Voorhis St., and a minimum of 73 feet from the Estero Boulevard/Voorhis Street intersection to the most southern driveway on Voorhis Street

Deviation #2

Deviation from LDC Section 10-416 (d)(3) Table 10-9 for the minimum width requirement of 15 feet for a type "C" buffer to allow a minimum width of 3 feet for a portion of the required buffer along the northeastern boundary.

Deviation #3

Deviation from LDC Section 34-704(a) which requires build-to lines for Estero Boulevard to be established at five to ten feet from front property lines. The deviation would allow for a build-to line of five to ninety feet for Estero Boulevard.

Deviation #4

Deviation from LDC Section 34-706(d) which requires properties that front on Estero Boulevard

and have access to a secondary street, to take access from the secondary street, except when the requirement would prohibit reasonable access. The deviation allows driveway access to remain as existing from Estero Boulevard and Voorhis Street.

Deviation #5

Deviation from LDC Section 34-704(b)(1)(a) which requires minimum street setbacks for streets other than Estero Boulevard to be ten feet. The deviation would allow a minimum of a zero (0) foot setback from Voorhis Street.

Deviation #6

Deviation from LDC Section 34-1744(b)(4)(d) which requires screening of refuse containers to not exceed six feet height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven feet six inches (7' 6") in height.

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 rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

- a. Minor ambiguities were resolved through the deviation process.
- b. The previous development on the subject property was destroyed by Ian and adoption of the rezoning with deviations ameliorates longstanding design issues on the site due to the lot's odd shape and orientation.
- 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.

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

- a. Each item enhances the achievement of the objectives of the planned development; and
- b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
- c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
- d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to approve Ordinance 24-02 which is, **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/did not** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance no. 24-05 and 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 24-05 is adopted 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 vote, the result was as follows:

DULY PASSED AND ADOPTED on this ____ day of February 2024.

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

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 ____ day of March 2024.

Attachments:

A – Conditions of Approval and Schedule of Uses
B – Master Concept Plan (MCP)

Exhibit A: CONDITIONS OF APPROVAL & SCHEDULE OF USE

Conditions of Approval

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230194 with the attached conditions:

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Landscaping on adjacent properties must be protected during construction or replaced at the expense of the Southland Corporation.
4. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

Schedule of Use

Convenience store with gas pumps



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Commercial Planned Development

CASE NUMBER: DCI Rezoning, 20230194

CASE NAME: 3051 Estero Blvd, rezone the property from Commercial Boulevard Zoning to Commercial Planned Development for the redevelopment of a convenience store.

TOWN COUNCIL HEARING DATE: March 18, 2024 at 9 AM

LPA HEARING DATE: February 27, 2024 at 9 AM

STAFF RECOMMENDATION: Approve with conditions

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: The Neighborhood Company/ Southland Corporation

Request: The applicant is requesting to rezone the property from Commercial Boulevard Zoning to Commercial Planned Development for the redevelopment of a convenience store.

Subject property: See attached site plan

Physical Address: 1301 Estero Blvd

STRAP #: 29-46-24-W1-0120C.0100

FLU: Boulevard

Zoning: Commercial Boulevard

Adjacent zoning and land uses:

North:	Commercial Office & Res. Conservation/ Mixed Residential Single family Residences
South:	Residential Multifamily/Mixed Residential Multifamily
East:	CPD & Res Conservation/ Mixed Residential Fire Department Headquarters and Residence
West:	Commercial Boulevard & Res Multifamily/Boulevard & Mixed Residential Fire Station and Multifamily

II. BACKGROUND AND ANALYSIS

Background:

The Neighborhood Company, applicant for 3051 Estero Blvd, is requesting a rezoning from Commercial Boulevard zoning to Commercial Planned Development for the redevelopment of a 5,000 square foot convenience store. The proposed development will have an entrance on Estero Blvd, two entrances from Voorhis St, four fueling locations with canopy and an internally accessed dumpster enclosure at the rear of the property. The site previously contained a 7-Eleven convenience store with four fueling locations and a gym.

The Commercial Boulevard zoning district does not allow a convenience store use, therefore the applicant is requesting a CPD to redevelop the site. Four deviations are requested from the land development code requirements.

Analysis:

3051 Estero Blvd has supported a convenience store in this location for many years. The previous convenience store and gym was approximately 6,234 square feet in size and appears to have provided twenty-two compliant parking spaces for the two uses, plus the four fueling-location canopy. The curb cuts did not comply with the Town's road design requirements and very little landscaping was provided. The previous building did not meet current flood requirements.

The proposed store is 5,000 square feet and will provide 18 parking spaces. The code requires four parking spaces per 1,000 square feet of retail, which would require 20 parking spaces. The applicant is proposing a four-space bike rack, which decreases the number of required spaces by one. The code also allows a reduction in parking of one space per four fuel pumps. With the reduction of two spaces, the site is compliant with the parking regulations.

The proposed site will provide landscaping and compliant curb cut widths. The proposed building will meet all building regulations and will be designed to be FEMA compliant with dry floodproofing.

Six deviations from the Land Development Code are requested. Those are listed below and include the applicant's justification as well as a staff comment.

Requested Deviations:

- 1) Relief from the driveway separation requirements of LDC Section 10-285 along Estero Boulevard and Voorhis Street. The deviation would allow driveway separation to be a minimum of 97.7 feet along Estero Blvd from Voorhis St., and a minimum of 73 feet from the Estero Boulevard/Voorhis Street intersection to the most southern driveway on Voorhis Street.**

Applicant Justification: The proposed driveways (accessways) onto Estero Boulevard and Voorhis Street existed prior to Hurricane Ian and the destruction of the prior convenience store/commercial structure. As shown on the MCP, these three accessways are to remain in the same locations as previously existed prior to Hurricane Ian. The proposed location of the redeveloped convenience store and supporting facilities is substantially consistent with the prior location of the prior convenience store/commercial structure and as such justifies maintaining the alignment and location of the accessways. Additionally, maintaining accessways from Estero Boulevard and Voorhis Street in these locations is appropriate due to the unique angular configuration of the subject property and the need to properly manage and maintain vehicular traffic, especially for fuel/delivery trucks, waste management trucks and vehicles accessing fuel pumps. The proposed configuration also provides accessway widths that meet current land development regulations as well as improving pedestrian connectivity with the addition of a sidewalk along Voorhis Street to the site and the relocation of the parking spaces from the front of the site to the building perimeter. There are no known documented issues or incidents with the accessway locations prior to Hurricane Ian. The proposed driveway locations still provide a safe and appropriately manageable traffic circulation that achieves general consistency with the intent of LDC Section 10-285 to provide as much connection separation while keeping the proposed redevelopment feasible and to not negatively impact the public's health, safety, and welfare.

Staff Comment: The proposed deviation seems appropriate in this instance due to the corner location and the small size of the parcel. The design will allow for parking at the rear of the building and access all the way around the building.

- 2) Relief from the minimum width requirement of 15 feet for a type "C" buffer under LDC Section 10-416 (d)(3) Table 10-9. The deviation would allow a min width of 3 feet for a portion of the required buffer along the northeastern boundary.**

Applicant Justification: A 15-foot-wide type "C" buffer is required along the northeast boundary of the proposed planned development. The proposed MCP indicates the location of the required dumpster enclosure and electric vehicle (EV) infrastructure within a small portion of this required buffer area. The proposed reconstructed dumpster enclosure is in the same location that it existed prior to the impacts of Hurricane Ian. The reconstructed dumpster enclosure positioned in the same location as it previously existed will require a reduction in the width of the buffer to a minimum of 3 feet and for a length of no more than 26 feet along the northeastern boundary. There are no known documented issues, nuisances, or complaints regarding the prior location of the dumpster enclosure.

The addition of a wall and appropriately placed landscaping plantings along the northeastern boundary buffer, will ensure any potential effects associated with the reconstruction of the dumpster and EV infrastructure in this area will be reduced or eliminated. The granting of this deviation to reduce the buffer width for a small portion of the northwestern boundary will allow the required dumpster enclosure to be reconstructed in the same location as it existed before Hurricane Ian and provide for much needed EV charging options within the town. Appropriate landscaping for this portion of the buffer and providing a new wall within the buffer will also help ensure there are no negative impacts to the public's health, safety, and welfare.

Staff Comment: The required Type C buffer with landscaping and hedges will be provided around the majority of the required area. The type C buffer also requires a wall, which was not provided around the prior development. Hedges currently exist around the property, existing landscaping on the adjacent property must remain undisturbed or must be replaced by the applicant if damaged during construction.

3) Relief from LDC Section 34-704(a) which requires build-to lines for Estero Boulevard to be established at five to ten feet from front property lines. The deviation would allow for a build-to line of five to ninety feet for Estero Boulevard.

Applicant Justification: Prior to Hurricane Ian the subject property was developed with a 6,250± sq. ft. commercial building which setback approximately 90' from Estero Blvd, the building contained a convenience store and a health/fitness facility with fuel stations located between the building and Estero Boulevard. The site is located within the Commercial Boulevard (CB) zoning designation which has build-to lines for Estero Boulevard established at five to ten feet from front property lines.

The proposed redevelopment has been designed with the building, property access and infrastructure for the fuel tanks and pumps remaining in the same basic location as they were prior to the storm. The building is approximately 89' from the Estero Boulevard property line, with type "C" buffers and a wall along the residential multi-family zoned properties at the northeast and northwest boundaries. Parking is proposed to be at the front and rear of the building with a drive aisle allowing vehicular access from the front to the rear of the property. The use of a convenience store with fuel station has a proven history of being successful in serving the community as it was previously designed. Through the Post-Disaster build back policy, the building will comply with all current building, life safety and accessibility codes. Based on the above justification, the granting of this deviation from the Commercial Boulevard build-to line to allow for a five – ninety feet build-to line at Estero Boulevard will not be injurious to the neighborhood or negatively impact the overall health, safety and welfare of the island or its residents.

Staff Comment: While the site contains a convenient store that will have some pedestrian use, much of the traffic will likely enter the site to use the gasoline

pumps. The gas pumps with canopy are located forward of the building and for this use, the build to line does not seem appropriate. Staff supports this request for an increased setback for this use.

- 4) Relief from LDC Section 34-706(d) which requires properties that front on Estero Boulevard and have access to a secondary street, to take access from the secondary street, except when the requirement would prohibit reasonable access. The deviation allows driveway access to remain as existing from Estero Boulevard and Voorhis Street.**

Applicant Justification: Prior to Hurricane Ian, accessway locations onto the subject property were located along Estero Boulevard and two on Voorhis Street. The proposed redevelopment has been designed with the building, property access and infrastructure for the fuel tanks and pumps remaining in the same basic location as they were prior to the storm and as a result, the accessway locations are also in the same locations. These accessway locations have demonstrated over time to provide safe and efficient vehicular access to the convenience store parking, fueling pumps, and service areas. The proposed site layout provides for an internal drive aisle allowing vehicular access from Estero Boulevard to the rear of the property allowing trucks delivering supplies, fuel and accessing the refuse container, and the ability to maneuver the site in an unobstructed manner.

The granting of this deviation to allow the proposed driveway locations to remain as they generally existed prior to Hurricane Ian will help enable the redevelopment of the convenience store and fueling stations. Their locations will continue to provide a safe, efficient, and manageable vehicular circulation to and from the property with no negative impacts the public's health, safety, and welfare.

Staff Comment: The proposed site layout allows for cars to access the gas pumps and circulate around the building. There were no known issues with the multiple entrances to this site, prior to Hurricane Ian.

- 5) Relief from LDC Section 34-704(b)(1)(a) which requires minimum street setbacks for streets other than Estero Boulevard to be ten feet. The deviation would allow a minimum of a zero (0) foot setback from Voorhis Street.**

Applicant Justification: The proposed site design locates the convenience store building with a zero (0) foot setback at the property line adjacent to Voorhis Street. This location allows for additional separation and green space between the residentially zoned property to the west, which allows for a 15 foot wide type C buffer. Having the building closer to the Voorhis Street property line, as detailed on the MCP, also allows for a internal drive aisle designed for an improved and efficient lane for delivery and service trucks.

The requested deviation to allow for a reduction in the street setback from a

minimum of 10 feet to 0 feet, provides relief to address the unique constraints of redeveloping a site after a natural disaster. The granting of this deviation will not negatively impact the health, safety and welfare of the community.

Staff Comment: A setback from the street would provide additional separation from the residence on the opposite side of Voorhis St. However, Voorhis St is a 30-foot-wide easement, giving a separation from the nearby residential properties of at least 30 feet. The provision of the 15-foot buffer on the northwest side of the property provides a much-needed separation from the immediately adjacent multifamily development. If there is not adequate room for both buffers, the buffer from the multifamily property is more desirable.

6) Relief from LDC Section 34-1744(b)(4)(d) which requires screening of refuse containers to not exceed six feet height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven feet six inches (7' 6") in height.

Applicant Justification: The proposed site design, as detailed on the MCP, locates the refuse container in approximately the same location as it was prior to Hurricane Ian. This location is appropriate in that it allows access to the container via a continuous drive aisle around the building from Estero Boulevard and Voorhis Street. The refuse container will be separated from the adjacent multi-family properties by a Type "C" buffer with a wall. To provide additional screening of the refuse container from adjacent residential properties and to help further contain any solid waste and recycling items and the dumpsters themselves, the container screening is proposed to exceed the six feet height restriction by 1.5 feet. Granting of this deviation to allow the refuse container screening (enclosure) to be a maximum of seven feet six inches (7' 6") in height will provide a benefit to the adjacent properties and not be injurious to the neighborhood or negatively impact the overall health, safety and welfare of the island or its residents.

Staff Comment: The request for additional height for a dumpster enclosure will decrease the visual impact of the refuse containers inside the enclosure. This request is the same as what was recommended by the Town Council for the 7-Eleven located at 1301 Estero Blvd.

Neighborhood Compatibility:

The previously existing residential properties in the area were destroyed by Hurricane Ian. The adjacent multifamily complex has been damaged, as has the Fire Department Buildings, although they remain standing. The proposed development will be more compliant than the previous development and will conform in many aspects. This convenience store use has been in existence in this area for many years and is not likely to have an adverse impact on the neighborhood.

Findings and Conclusions:

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning.

(b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

No errors or ambiguities exist.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

The previous structure was destroyed by Hurricane Ian and redevelopment of the site makes the requests appropriate.

(3) The impact of a proposed change on the intent of this chapter.

No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

The proposed development is in compliance with the intensity of the district. The use was existing in the Commercial Boulevard zoning district therefore it would be allowed to continue. This is an increase in square footage however, which is not allowed by the code without a rezoning to Commercial Planned Development. The proposed site development will be more compliant with the site development requirements than the previous development. Additionally, the new structure will be designed to current building and flood requirements which is supported by the comprehensive plan.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

The proposed development will meet performance standards set for the in 34-2031.

There are no special location standards for convenience stores.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

The urban services exist in this location.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

The request will have no impact on environmentally critical areas and natural resources.

(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.

The proposed use has been in existence in this location for many years. It is not anticipated to have any detrimental impacts on existing or planned uses.

(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.
This use in this location will not place additional burden on the transportation network or other facilities and services.

(13) For planned development rezonings, see [§ 34-216](#) for additional considerations.

(c) Findings. Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

The proposed use and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

The proposed use complies with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.

The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see [§ 34-216](#) of this chapter for additional findings.

Sec. 34-216 Findings:

a. The proposed use or mix of uses is appropriate at the subject location;
The use is allowed in this location because it previously existed on this property, however the building previously contained a smaller convenience store and a gym. An expansion of the square footage of the convenience store use requires the CPD. The proposed use has existed in this location without creating a nuisance.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
Sufficient safeguards are provided for the public interest.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;
All conditions are related to the impacts on the public interest.

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.
Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Policy 4-B-5: The development is providing a wall around the property and landscaping to buffer the site from adjacent multi-family residential development.

Policy 4-C-3: The proposed development will attract minimal additional traffic; it will be less square footage than the previous structure and the same height. The orientation on the site will not make the structure more impactful on the neighborhood.

3. Policy 4-C-4 on building heights taller than the standard height limit.
The proposed structure will be a single-story building.

4. Policy 4-C-8 on density transfers.
Not applicable.

5. Policy 4-E-1 on pre-disaster buildback.
Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.
The proposed development is slightly smaller in size, has a similar use (the gym use is going away) to the previous development and is expected to have no adverse impact on traffic.

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and

The requested deviations allow the development of the site, and are primarily due to the site being a corner lot.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and

The proposed deviations preserve the public health.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

The deviations are not a detriment to the public interest.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

The deviations are consistent with the comprehensive plan.

III. RECOMMENDATION

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230194 with the attached conditions.

At the LPA hearing on February 27th, 2024 the LPA recommended approval on a 6-0 vote with one member abstaining.

IV. CONDITIONS OF APPROVAL

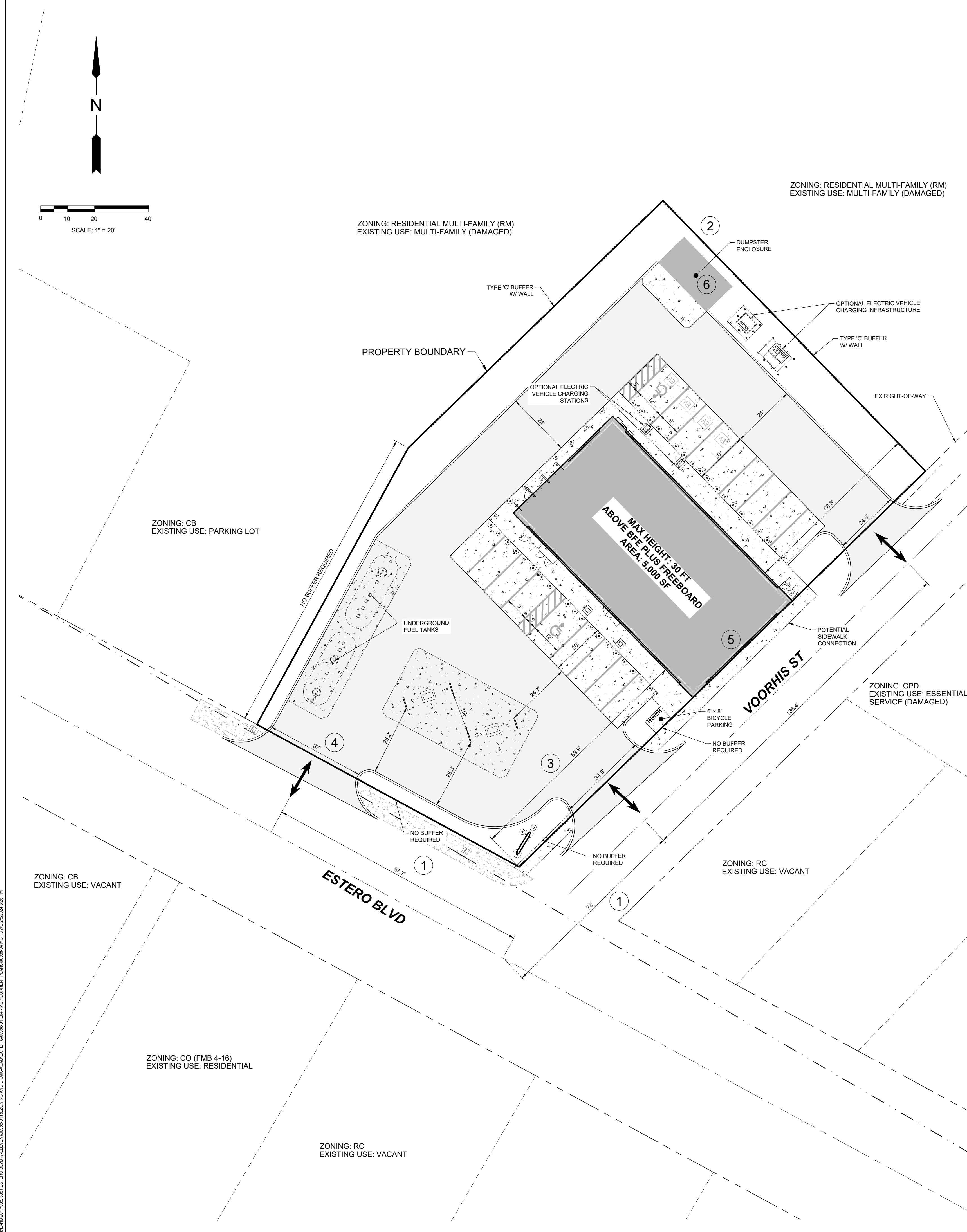
1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Landscaping on adjacent properties must be protected during construction or replaced at the expense of the Southland Corporation.
4. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

Staff Report Exhibits:

A – Master Concept Plan

B – Complete Application

C – Postcards to Adjacent Properties



DEVELOPMENT STANDARDS TABLE	
	REQUIRED
BUILD TO LINE	
PRIMARY STREET (ESTERO BLVD)	0-90 FT
MINIMUM SETBACKS - PRIMARY AND ACCESSORY STRUCTURES	
SECONDARY STREET (VOORHIS ST)	0 FT
SIDE/REAR	PRIMARY: 0 FT; ACCESSORY: 3 FT
MINIMUM LOT DIMENSIONS	
LOT WIDTH	110 FT
LOT DEPTH	210 FT
LOT AREA	0.695 AC
MAXIMUM INTENSITY - FLOOR AREA RATIO (FAR)	
MAX FAR	0.17
MAX INTENSITY	5,000 SF
MAX BUILDING HEIGHT	
	30 FT ABOVE BASE FLOOD ELEVATION PLUS FREEBOARD

GENERAL NOTES:

1. THE BUILDING SHALL BE A MAXIMUM OF 5,000 +/- SQUARE FEET.
2. PROJECT WILL BE DEVELOPED IN ONE PHASE.
3. WATER MANAGEMENT REQUIREMENTS FOR REDEVELOPMENT PROJECTS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT THE TIME OF D.O.
4. THE EXACT BUILDING AND SITE IMPROVEMENT CONFIGURATIONS ARE PRELIMINARY IN NATURE AND SUBJECT TO CHANGE. THE FINAL DESIGN AND IMPROVEMENT DETAILS SHALL BE DEFINED AS PART OF THE DEVELOPMENT ORDER (DO) PROCESS.
5. ALL OTHER DEVELOPMENT STANDARDS SHALL BE SET FORTH IN LDC CHAPTER 34 OR ANY OTHER APPLICABLE PROVISIONS OF THE LDC.

SCHEDULE OF USES:

COMMERCIAL

11. RETAIL STORE, SMALL TO INCLUDE: CONVENIENCE STORES, WITH FUEL PUMPS AND OPTIONAL ELECTRIC VEHICLE CHARGING STATIONS. (OPEN 24 HOURS / 7 DAYS)

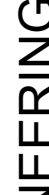
DEVIATIONS:

1. SEEKS RELIEF FROM THE DRIVEWAY SEPARATION REQUIREMENTS OF LDC SECTION 10-285 ALONG ESTERO BOULEVARD AND VOORHIS STREET. THE DEVIATION WOULD ALLOW DRIVEWAY SEPARATION ALONG ESTERO BOULEVARD TO BE A MINIMUM OF 97.7 FEET AND A MINIMUM OF 73 FEET FROM THE ESTERO BOULEVARD INTERSECTION TO THE SOUTHERN MOST DRIVEWAY.
2. SEEKS RELIEF FROM THE MINIMUM WIDTH REQUIREMENT OF 15 FEET FOR A TYPE "C" BUFFER UNDER LDC SECTION 10-416 (D)(3) TABLE 10-9. THE DEVIATION WOULD ALLOW A MINIMUM WIDTH OF 3 FEET FOR A PORTION OF THE REQUIRED BUFFER ALONG THE NORTHEASTERN BOUNDARY.
3. SEEKS RELIEF FROM LDC SECTION 34-704(A) WHICH REQUIRES BUILD-TO LINES FOR ESTERO BOULEVARD TO BE ESTABLISHED AT FIVE TO TEN FEET FROM FRONT PROPERTY LINES. THE DEVIATION WOULD ALLOW FOR A BUILD-TO LINE OF FIVE TO NINETY FEET FOR ESTERO BOULEVARD.
4. SEEKS RELIEF FROM LDC SECTION 34-706(D) WHICH REQUIRES PROPERTIES THAT FRONT ON ESTERO BOULEVARD AND HAVE ACCESS TO A SECONDARY STREET, TO TAKE ACCESS FROM THE SECONDARY STREET, EXCEPT WHEN THE REQUIREMENT WOULD PROHIBIT REASONABLE ACCESS. THE DEVIATION ALLOWS DRIVEWAY ACCESS TO REMAIN AS EXISTING FROM ESTERO BOULEVARD AND VOORHIS STREET.
5. SEEKS RELIEF FROM LDC SECTION 34-704(B)(1)(A) WHICH REQUIRES MINIMUM STREET SETBACKS FOR STREETS OTHER THAN ESTERO BOULEVARD TO BE TEN FEET. THE DEVIATION WOULD ALLOW A MINIMUM OF A ZERO (0) FOOT SETBACK FROM VOORHIS STREET.
6. SEEKS RELIEF FROM LDC SECTION 34-1744(B)(4)(D) WHICH REQUIRES SCREENING OF REFUSE CONTAINERS TO NOT EXCEED SIX FEET HEIGHT. THE DEVIATION WOULD ALLOW THE REFUSE CONTAINER SCREENING (ENCLOSURE) TO BE A MAXIMUM OF SEVEN FEET SIX INCHES (7' 6") IN HEIGHT.

LEGEND

	CPD BOUNDARY
	BUILDING FOOTPRINT
	DRIVEWAY
	CONCRETE
	INGRESS / EGRESS
	DEVIATION

DATUM NOTE:
ALL ELEVATIONS REFERENCE NAVD88 VERTICAL DATUM.
APPROXIMATE CONVERSION FOR PROJECT AREA: NAVD88 + 1.18' = NGVD29
ANY DATUM CONVERSIONS SHOULD BE CONFIRMED BY A LICENSED
SURVEYOR PRIOR TO USE.

 **J.R. EVANS**
ENGINEERING

J.R. EVANS ENGINEERING, P.A.
9961 INTERSTATE COMMERCE DR., STE. 230
FT MYERS, FLORIDA 33913
PHONE: (239) 405-9148
FAX: (239) 288-2537
WWW.JREVAENGINEERING.COM

7-ELEVEN STORE #24394: 3051 ESTERO BLVD

MASTER CONCEPT PLAN

[illegible]



September 28, 2023

Town of Fort Myers Beach
Community Development Department
2525 Estero Blvd.
Ft Myers Beach, FL 33931

**Subject: 3051 Estero Blvd Commercial Planned Development (CPD) – Submittal #1
A Planned Development Rezone Application**

Intake Team:

The Neighborhood Company is pleased to submit on behalf of our client, J.R. Evans Engineering, P.A. an Application for a Planned Development associated with the subject property located at 3051 Estero Blvd., Ft Myers Beach, FL 33931. The proposed request is to seek the following:

- Rezoning of the subject property from Commercial Boulevard to Commercial Planned Development (CPD) to allow flexibility to redevelop the subject property and rebuild a desired 5,000 +/- SF convenience store.

Please find attached the following items to this cover letter consistent with application submittal checklist:

1. Application Filing Fee;
2. Application for Public Hearing:
 - Disclosure of Interest Affidavit & Authorization Form;
 - Letter of Authorization;
 - Exhibit 6-1 – STRAP # and Legal Description;
 - Exhibit 6-2 – Boundary Survey;
 - Exhibit 6-3 – Area Location Map;
 - Exhibit 6-6 – List of Surrounding Property Owners within 500';
 - Exhibit 6-7– Map Surrounding Property Owners within 500'; and
 - Mailing Labels Surrounding Property Owners within 500';
3. Planned Development Zoning - Supplement PH-D:
 - Narrative:
 - Background & Request
 - Proposed Use/Development
 - Location & Compatibility
 - Supplement PH-D Section A: Comprehensive Plan Amendments
 - Supplement PH-D Section B: Phasing of Construction
 - Supplement PH-D Section C: Comp Plan Compliance
 - Supplement PH-D Section D: Design Standards Compliance
 - Supplement PH-D Section E: Decision-making Compliance
 - Conclusion

Page 1 of 2



- Schedule of Deviations and Justifications;
- Master Concept Plan;
- Architectural Elevations;
- Schedule of Uses; and
- Traffic Impact Statement

We look forward to your review and are available to answer questions related to this application.

Sincerely,

The Neighborhood Company

Kenrick Gallander, AICP
Vice President, Partner

Attachments: Application Submittal Requirements (listed above)

cc: 7-Eleven Inc.
Creighton Construction & Management
Elizabeth Fountain
Daniel Mumford
File: #230031.01.02



**3051 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone**

FILING FEE

Town Fee Schedule 2023:

- PD Rezone = \$8,000

TOTAL: \$8,000



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: 3051 Estero Blvd., Ft Myers Beach, FL 33931

STRAP Number: 29-46-24-W1-0120C.0100

Applicant: The Neighborhood Company Phone: 850-803-5621

Contact Name: Kenrick S. Gallander, AICP Phone: _____

Email: kg@theneighborhood.company Fax: _____

Current Zoning District: Commercial Boulevard

Future Land Use Map (FLUM) Category: Boulevard

FLUM Density Range: 6 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*: The Neighborhood Company Phone: 850-803-5621

**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: 5618 Whispering Willow Way, Fort Myers, FL 33908

Email: kg@theneighborhood.company Fax: _____

Contact Name: Kenrick Gallander Phone: 850-803-5621



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: Kenrick Gallander, AICP Phone: 850-803-5621
Address: 5618 Whispering Willow Way, Ft Myers, FL 33908
Email: kg@theneighborhood.company Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Elizabeth Fountain, P.E. Phone: 239-405-9148
Address: 9961 Interstate Commerce Dr. #230, Fort Myers, FL 33913
Email: Elizabeth@jrevansengineering.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 _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☒ Planned Development
- ☒ Rezoning from Commercial Boulevard 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

7-Eleven, INC- formerly Southland Corporation

Percentage of Stock

100

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, Grant Distel (name), as Sr. Director of Development (title) of Southland Corporation - 7-Eleven, 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

Southland Corporation - 7-Eleven, INC

Name of Entity (corporation, partnership, LLP, LLC, etc)

Grant Distel

Signature

Grant Distel

Typed or Printed Name

SR. Director Development

Title

9/11/2023

Date

STATE OF FL COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 11th day of September, 2023, by GRANT DISTEL, ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Kelli J Frost
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 29-46-24-W1-0120C.0100

Property Address: 3051 Estero Blvd., 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: Zimmer's Addition to Shell Mound Park

Book: 11 Page: 54 Unit: _____ Block: C Lot(s): 10

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) 125 (average) feet
Depth (please provide an average width if irregular in shape) 210 feet
Frontage on street: 110' Estero & 210' Voorhis feet. Frontage on waterbody: N/A feet
Total land area: 30,291 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

South FL -865/San Carlos Blvd for 0.3 miles, FL-865/San Carlos Blvd. turns slightly
left and becomes Estero Blvd. for 1.4 miles, turn left into site at the corner of Estero
Blvd. and Voorhis Street.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

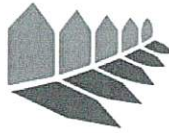
- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 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 |



THE NEIGHBORHOOD
COMPANY

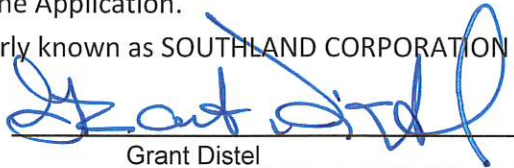
I Grant Distel, as authorized member of 7-Eleven, INC formerly known as SOUTHLAND CORPORATION owner of property located at 3051 Estero Blvd., Fort Myers Beach, FL, identified by STRAP Number 29-46-24-W1-0120C.0100, hereby authorizes The Neighborhood Company regarding the above-referenced property to serve as agent for the Town of Ft Myers Beach Planned Development Rezone Application.

7-Eleven, INC- formerly known as SOUTHLAND CORPORATION

By:

Print Name:

Title:


Grant Distel

SR. Director of Development

STATE OF FLORIDA
CITY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 12 day of SEPTEMBER, 2023 by GRANT DISTEL, as SR. DIRECTOR OF DEVELOPMENT of 7-ELEVEN INC, on behalf of the company(s), who ☒ is personally known to me OR ☐ has produced a(n) driver's license as identification.

(NOTARY STAMP)




Notary Public, State of FLORIDA
Print Name: Kelli J Frost
My Commission Expires: 2.26.24



The State of Texas

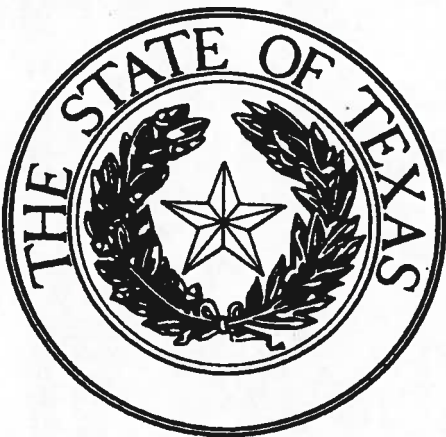
SECRETARY OF STATE

IT IS HEREBY CERTIFIED that the attached is/are true and correct copies of the following described document(s) on file in this office:

7-ELEVEN, INC.
FORMERLY: THE SOUTHLAND CORPORATION
CHARTER #179090-00

ARTICLES OF AMENDMENT

FILE DATE: APRIL 29, 1999
EFFECTIVE DATE: APRIL 30, 1999



IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, on April 30, 1999.

Elton Bomer
Secretary of State

PH

**ARTICLES OF AMENDMENT
TO THE
SECOND RESTATED ARTICLES OF INCORPORATION OF
THE SOUTHLAND CORPORATION

In the Office of the
Secretary of State of Texas

APR 29 1999

Corporations Section

Pursuant to the provisions of the Texas Business Corporation Act, THE SOUTHLAND CORPORATION, a corporation organized under the laws of the State of Texas, hereby amends its Second Restated Articles of Incorporation (the "Articles of Incorporation") and for that purpose, submits the following statement:

ARTICLE ONE

The name of the corporation is The Southland Corporation.

ARTICLE TWO

Article One of the Articles of Incorporation is hereby amended and the full text of Article One, as amended, is as follows:

"The name of the Corporation is "7-Eleven, Inc."

ARTICLE THREE

The amendment to the Articles of Incorporation was adopted by a vote of the shareholders of the corporation on April 28, 1999.

ARTICLE FOUR

The number of shares of the corporation outstanding at the time of such adoption was 409,961,233; and the number of shares entitled to vote thereon was 409,941,168.

The designation and number of shares of each class or series entitled to vote thereon as a class or series were as follows:

Class or Series	Number of Shares Outstanding and Entitled to Vote
None	

ARTICLE FIVE

The number of shares voted for such amendment was 349,690,410 and the number of shares voted against such amendment was 159,879.

The number of shares of each class or series entitled to vote as a class or series voted for or against such amendment as follows:

Class or Series	Number of Shares Voted <u>For</u> <u>Against</u>
None	

ARTICLE SIX

The effective date of this amendment shall be April 30, 1999.

Dated the 28th day of April, 1999.
(to be effective April 30, 1999)

THE SOUTHLAND CORPORATION

By: Bryan F. Smith, Jr.
Name and Title: Bryan F. Smith, Jr. - Senior Vice President



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Foreign Profit Corporation
7-ELEVEN, INC.

Filing Information

Document Number	815881
FEI/EIN Number	75-1085131
Date Filed	01/02/1962
State	TX
Status	ACTIVE
Last Event	NAME CHANGE AMENDMENT
Event Date Filed	05/28/1999
Event Effective Date	NONE

Principal Address

3200 HACKBERRY ROAD
IRVING, TX 75063

Changed: 01/26/2023

Mailing Address

PO Box 711
Dallas, TX 75221

Changed: 01/08/2021

Registered Agent Name & Address

CORPORATE CREATIONS NETWORK INC.
801 US HIGHWAY 1
NORTH PALM BEACH, FL 33408

Name Changed: 12/16/2010

Address Changed: 03/25/2020

Officer/Director Detail

Name & Address

Title President, Director, CEO

DEPINTO, JOSEPH
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Asst. Secretary, Sr. Director Transaction Tax

Baker , James
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Asst. Secretary, Sr. Manager & Development

Qureshi , Asif
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Asst. Secretary, Sr. Development Directory

Distel , Grant
3200 HACKBERRY ROAD
IRVING, TX 75063

Title VP, Development

Williams , Ian C.
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Sr. Director - Corp Dev, Asst Secretary

Bantos , Charles
3200 HACKBERRY ROAD
IRVING, TX 75063

Title SVP, Construction Engineering & Facilities

Angell, Holly
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Sr Director, Development Strategy & Support

Ingram, Richard
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Assistant Secretary, Franchise Sales Rep

Smith, Edward (Randy)
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Assistant Secretary, Franchise Sales Rep Specialist

Khashroom, Khaled (Kenny)
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Franchise Sales Rep Specialist

Barrett, Merlyn (Angel)
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Assistant Secretary, Sr. Development Director, Entitlements

Gardner, Nathanael
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Asst. Secretary, Director of Licensing

Duncan, Kimberly
3200 HACKBERRY ROAD
IRVING, TX 75063

Title SVP/GC/SEC

Kirstein, Lillian F
3200 HACKBERRY ROAD
IRVING, TX 75063

Title Franchise Agreement Specialist

Heagle, David
3200 HACKBERRY ROAD
IRVING, TX 75063

Annual Reports

Report Year	Filed Date
2021	01/08/2021
2022	04/01/2022
2023	01/26/2023

Document Images

01/26/2023 -- ANNUAL REPORT	View image in PDF format
04/01/2022 -- ANNUAL REPORT	View image in PDF format
01/08/2021 -- ANNUAL REPORT	View image in PDF format
05/08/2020 -- ANNUAL REPORT	View image in PDF format
01/30/2019 -- AMENDED ANNUAL REPORT	View image in PDF format
01/17/2019 -- ANNUAL REPORT	View image in PDF format
02/27/2018 -- ANNUAL REPORT	View image in PDF format

03/23/2017 -- ANNUAL REPORT	View image in PDF format
10/10/2016 -- AMENDED ANNUAL REPORT	View image in PDF format
05/24/2016 -- AMENDED ANNUAL REPORT	View image in PDF format
05/12/2016 -- AMENDED ANNUAL REPORT	View image in PDF format
03/17/2016 -- ANNUAL REPORT	View image in PDF format
11/18/2015 -- AMENDED ANNUAL REPORT	View image in PDF format
11/04/2015 -- AMENDED ANNUAL REPORT	View image in PDF format
10/19/2015 -- AMENDED ANNUAL REPORT	View image in PDF format
03/24/2015 -- ANNUAL REPORT	View image in PDF format
03/17/2014 -- ANNUAL REPORT	View image in PDF format
10/18/2013 -- AMENDED ANNUAL REPORT	View image in PDF format
08/19/2013 -- AMENDED ANNUAL REPORT	View image in PDF format
03/20/2013 -- ANNUAL REPORT	View image in PDF format
01/05/2012 -- ANNUAL REPORT	View image in PDF format
08/17/2011 -- ANNUAL REPORT	View image in PDF format
07/06/2011 -- ANNUAL REPORT	View image in PDF format
03/24/2011 -- ANNUAL REPORT	View image in PDF format
12/16/2010 -- Reg. Agent Change	View image in PDF format
08/13/2010 -- ANNUAL REPORT	View image in PDF format
01/12/2010 -- ANNUAL REPORT	View image in PDF format
03/24/2009 -- ANNUAL REPORT	View image in PDF format
02/17/2009 -- ANNUAL REPORT	View image in PDF format
05/28/2008 -- ANNUAL REPORT	View image in PDF format
03/11/2008 -- ANNUAL REPORT	View image in PDF format
11/26/2007 -- ANNUAL REPORT	View image in PDF format
06/06/2007 -- ANNUAL REPORT	View image in PDF format
03/29/2007 -- ANNUAL REPORT	View image in PDF format
12/20/2006 -- ANNUAL REPORT	View image in PDF format
03/23/2006 -- ANNUAL REPORT	View image in PDF format
03/31/2005 -- ANNUAL REPORT	View image in PDF format
03/29/2004 -- ANNUAL REPORT	View image in PDF format
04/02/2003 -- ANNUAL REPORT	View image in PDF format
05/28/2002 -- ANNUAL REPORT	View image in PDF format
12/12/2001 -- Reg. Agent Change	View image in PDF format
04/16/2001 -- ANNUAL REPORT	View image in PDF format
05/02/2000 -- ANNUAL REPORT	View image in PDF format
05/28/1999 -- Name Change	View image in PDF format
05/03/1999 -- ANNUAL REPORT	View image in PDF format
04/21/1998 -- ANNUAL REPORT	View image in PDF format
07/18/1997 -- ANNUAL REPORT	View image in PDF format
04/21/1997 -- ANNUAL REPORT	View image in PDF format
04/02/1996 -- ANNUAL REPORT	View image in PDF format
04/19/1995 -- ANNUAL REPORT	View image in PDF format



**3051 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone**

EXHIBIT 6-1: STRAP # & LEGAL DESCRIPTION

- **STRAP #:** 29-46-24-W1-0120C.0100

- **LEGAL DESCRIPTION**

PARCEL 1:

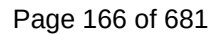
LOT 10, BLOCK C, ZIMMER'S ADDITION TO SHELL MOUND PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 11, PAGE 54, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

PARCEL 2:

A PARCEL OF LAND LYING IN SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF VOORHIS AVENUE AND ESTERO BOULEVARD AT FORT MYERS BEACH, FLORIDA; THENCE NORTHEASTERLY A DISTANCE OF 50 FEET ALONG THE NORTHSIDE OF VOORHIS AVENUE TO THE POINT OF BEGINNING OF THE LANDS TO BE CONVEYED; THENCE CONTINUE ALONG THE NORTHERLY SIDE OF VOORHIS AVENUE A DISTANCE OF 160 FEET; THENCE NORTHWESTERLY AND PERPENDICULAR TO VOORHIS AVENUE 140 FEET; THENCE SOUTHWESTERLY PARALLEL WITH VOORHIS AVENUE 131.5 FEET; THENCE SOUTHERLY AT AN ANGLE PERPENDICULAR TO ESTERO BOULEVARD TO A POINT ON A LINE MEASURED PERPENDICULAR FROM VOORHIS AVENUE, DRAWN THROUGH THE POINT OF BEGINNING OF THE LANDS TO BE CONVEYED; THENCE SOUTHEASTERLY ALONG SUCH LINE TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 30,291 SQUARE FEET OR 0.70 ACRES OF LAND.





PROJECT LOCATION (N.T.S)



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: 3051 Estero Blvd Commercial Planned Development (7-Eleven)
Authorized Applicant: The Neighborhood Company
STRAP Number(s): 29-46-24-W1-0120C.0100

Current Property Status: Vacant
Current Zoning: Commercial Boulevard
Future Land Use Map (FLUM) Category: Boulevard
Platted Overlay? ☐ yes, ☒ no FLUM Density Range: 6 du / acre

Requested Action:

☐	DRI (with rezoning)
☒	Planned Development (also check below)
☒	Rezoning from: Commercial Boulevard to: CPD
☐	Amendment to Master Concept Plan/attendant documentation

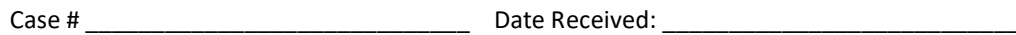
PART I Narrative Statements

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)
	See attached NARRATIVE document.

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)



Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

[illegible]

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.

[illegible]



Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

[illegible]

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.

[illegible]

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.

There are no administrative amendment to an approved Master Concept Plan.

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
- Traffic Impact Statement
- Architectural Elevations
- Schedule of Uses
- 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.

Guide to Filing Supplement PH-D for Planned Developments

Amendments Applications for amendments to an approved Master Concept Plan or its attendant documentation will require as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses that have occurred since the original application. Some amendments can be approved administratively as provided in LDC Section 34-219, but all other amendments must proceed through the public hearing process.

Through a pre-application meeting with Community Development staff, prospective applicants can determine whether proposed amendments will require a public hearing, and can request waivers from any submittal requirements that are not necessary to specify the changes requested.

All other planned developments All other applications must complete and submit the Request for Public Hearing and Supplement PH-D, along with all required documents. Refer also to the instructions for the Request for Public Hearing form.

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.

Authorized 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.

Requested Action: Indicate whether the request is a DRI (Development of Regional Impact) that requires rezoning, a Planned Development, or an amendment to a Planned Development.

Part 1 Narrative Statements:

Comprehensive Plan Amendments

If Comprehensive Plan Amendments are pending that might affect the future use of the property, explain the amendments' possible effects.

Construction Phasing

If the project is to be constructed in multiple phases, describe the ordering and timing of the proposed phasing. In the absence of a phasing plan, phasing of development would be governed by the limitations of LDC Section 34-220.

Comprehensive Plan Compliance

Explain how the proposed development complies with the Fort Myers Beach Comprehensive Plan. Address the Future Land Use Map category or categories applicable to the subject property and any other relevant policies.

Design Standards Compliance

For properties and/or projects as described in LDC Section 34-992, explain how the proposed development will comply with the standards in LDC Sections 34-991 through 34-997.

Decision-making compliance

Explain how the proposed development will comply with the standards for decision-making in LDC Section 34-85.

Schedule of deviations and written justification

Identify the deviations from the requirements of the Land Development Code that are requested for the proposed development and justify them in relation to the guidance in LDC Section 34-932(b).

Administrative amendments

If the request is for an amendment to a planned development, indicate which of the requested changes could not be approved administratively as allowed by LDC Section 34-219.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for rezoning, including Planned Developments and Planned Development amendments for which public hearing is required, consist of the Public Hearing form and the supplemental form PH-D. Both parts of the application form must be completed and submitted.

Master Concept Plan. The master concept plan consists of maps, graphic illustrations, and written statements concerning the development. Space has

been provided on this form for many of the required narrative statements, though they can be attached on separate sheets. A master concept plan must include the following required information:

- a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase.
- b. The maximum height of any proposed buildings or structures, using the Land Development Code's method of measuring building height (see LDC Section 34-631).
- c. Proposed principal and accessory uses, identified using the terminology employed in the Land Development Code. Employ the groupings of uses in Tables 34-1 and 34-2 of the Land Development Code, or specify individual uses if necessary.
- d. The density and intensity of the proposed uses, in terms of dwelling units by type, or through conversion factors for hotel/motel units. Provide gross square footages for types of commercial uses, and maximum Floor-Area Ratio.
- e. The minimum width and composition of proposed buffers along the perimeter of the property. References to the types of buffers required by LDC chapter 10 are acceptable.
- f. The location of any environmentally sensitive land and water, based on standard environmental data capable of verification by Town staff. Developments larger than one acre in size may require a protected species survey under LDC Section 10-473.
- g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, with distances from other existing or planned rights-of-way or access points.
- h. Access and facilities for public transit, if applicable.
- i. The general location of stormwater management areas.
- j. The specific locations of requested deviations, including sample detail drawings illustrating their effects if applicable.
- k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded.
- l. Proposed dedications, if any, including beach access, boat ramps, park or recreation areas, open space, or other easements.

Traffic Impact Statement. A traffic impact statement in the same format and to the same degree of detail required for development orders (LDC Section 10-286).

Architectural Elevations. Architectural elevations or three-dimensional renderings that show at minimum all building façades adjoining public streets. These drawings will serve for the sketch requirement of LDC Section 34-202(b)(5) as well. If aspects of the proposed design will not comply with the commercial design standards of LDC Sections 34-991 through 34-997 (if required), the applicant may request deviations from those standards.

Schedule of uses. A list of all proposed principal and accessory uses. Identify these uses by reference to the groups of uses in Tables 34-1 and 34-2 of the Land Development Code unless greater specificity is necessary. For amendments to planned developments that were approved under different regulations, the enumeration of uses in the schedule of uses supplied for the amendment must be specific enough to explain what uses were previously approved without future reference to prior regulations or approvals.



**3051 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone Application**

NARRATIVE

BACKGROUND & REQUEST

The subject property is located at 3501 Estero Blvd., Fort Myers Beach, FL 33931, and consists of a single parcel (STRAP#: 29-46-24-W1-0120C.0100) totaling 30,291± sq. ft. (0.70± acres) (See Figure 1). The property has a Future Land Use (FLU) Map Designation of Boulevard and is within the Commercial Boulevard Zoning District.

The Neighborhood Company as the Applicant, Authorized Representative, and Agent on behalf of the owner 7-Eleven Inc, is submitting this Planned Development Rezone Application to request the following:

- Rezone from Commercial Boulevard to Commercial Planned Development (CPD)

The subject property prior to Hurricane Ian was developed with a 6,250± sq. ft. commercial building consisting of a convenience store with fuel stations (7-Eleven) and a health/fitness facility (See Figure 2). As a result of the hurricane, the property and existing structure received significant damage (See Figure 3). Assessments of the property required the structure and site infrastructure to be demolished and the site cleared (See Figure 4)



Figure 1. Location Map



Figure 2. Pre Hurricane Ian

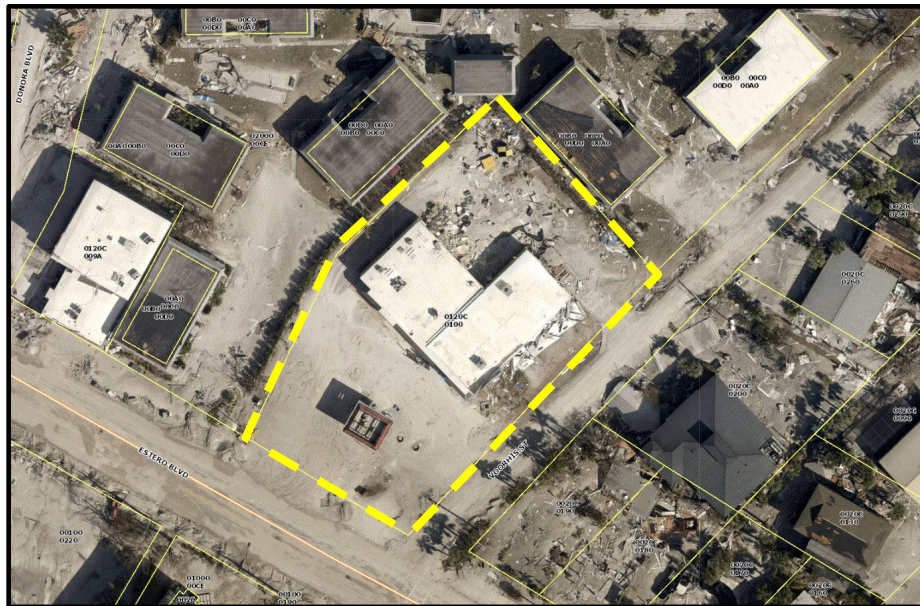


Figure 3. Post Hurricane Ian

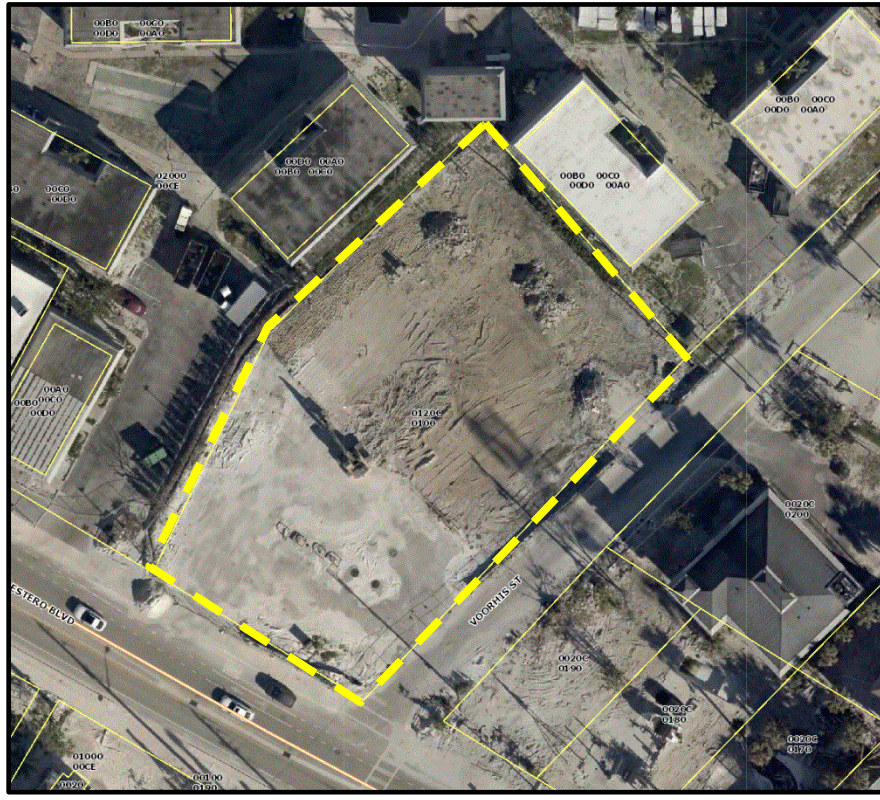


Figure 4. Existing Conditions

PROPOSED USE/DEVELOPMENT

The 7-Eleven convenient store use, which existed on the property for decades, was a very beneficial and popular commercial business for local residents and visitors. Based on the historic demand and continued need for convenience-based businesses in Fort Myers Beach (FMB), the owner is pursuing a new development plan. This plan for a new convenience store with fuel pumps and possible electric vehicle charging station is designed to improve upon what existed prior lan, but also work to potentially reduce or eliminate any non-conformities that existed on the property.

Convenience stores have been and continue to be a stable and necessary commercial business in all communities throughout the United States, and Fort Myers Beach, Florida is no exception. As Fort Myers Beach continues to re-build and regain the pre-Hurricane Ian resident and visitor populations, convenience related businesses will once again be expected and needed in the community.

The specific proposed post hurricane redevelopment of the property will consist of the following:

- A 5,000+/- sq. ft. convenience store with fuel stations and possible electric vehicle charging stations/infrastructure to be open 24 hours and seven days a week.
- One (1) access point from Estero Boulevard and two (2) access points from Voorhis St.
- Dumpster and enclosure with direct access at the rear of the site.



The FMB Land Development Code (LDC) Sec. 34-705(C) states that the floor area ratio (FAR) shall not exceed 1.0. A FAR of 1.0 would allow for a maximum total floor area of the building to be approximately 30,291 square feet. Under the proposed rezoning to CPD, the project is limiting the FAR to a maximum of 0.17. This equates to a maximum building area of approximately 5,000 square feet, which is well below the potential maximum allowed.

LOCATION & COMPATIBILITY

The site is located at the northwest corner of Estero Blvd. and Voorhis Street. The Comprehensive Plan defines and describes this area of the island as the “Quiet Center of Estero Island, which remains peacefully between the bustling portions of Estero Blvd. and the high-rises further down the beach.” This area of the island is predominately single-family neighborhoods with some condominiums, smaller resorts, and the mid-island marina. Estero Blvd. has continuous sidewalks on both sides and the side streets are more “walkable” and link to the town’s “hidden path” system of the neighborhood walkways.

Although described as predominately residential, this area contained a restaurant, fire station, the fire department headquarters as well as the convenience store and gym/fitness facility prior to Hurricane Ian. Junkanoo’s, a popular beach side restaurant was located across Estero Blvd. from the subject site. The properties to the north and west comprise the Gulf Westwind Condominiums, to the east across Voorhis Street is the Fort Myers Beach Fire Department Headquarters and a single-family residence. The fire station is approximately 150 feet west of the site on Estero Blvd. This site within this area of Fort Myers Beach has proven to be an ideal location for the convenience store with fuel pumps and has a history of serving the needs of residents and visitors for several decades and will continue to as this portion of the island redevelops.

The proposed redevelopment based on the requested rezoning and supporting Master Concept Plan (MCP) will maintain the locations of the access drives from Estero Blvd., the two access drives on Voorhis Street, as well as the general location of the fuel tanks and fueling stations fronting on Estero Boulevard. The building is also in the same general location on the property but will be relocated closer to Voorhis St. Relocating the building closer to Voorhis Street will now provide additional spacing for an internal two-way drive aisle on the western side of the building. This wider drive aisle will allow interconnectivity between the front and rear of the site for access to parking at the rear of the building, potentially two electric vehicle (EV) charging stations as well as maintaining direct access to the prior existing enclosed dumpster area. The additional parking in the rear and the drive aisle to the west of the building will provide additional separation from the multi-family buildings.



The future land use category, zoning and existing land uses surrounding the property are as follows:

	FUTURE LAND USE	ZONING DISTRICT	EXISTING LAND USES
NORTH	Mixed Residential	Residential Multi-family	Multi-family (Damaged)
SOUTH	Boulevard and Mixed Residential	Commercial Boulevard, Commercial Office, Residential Conservation	Estero Blvd ROW, Vacant, Residential
EAST	Mixed Residential	Residential Conservation and CPD	Vacant and Essential Service (Damaged)
WEST	Boulevard and Mixed Residential	Commercial Boulevard & Residential Multi-family	Parking Lot and Multi-family (Damaged)

The properties surrounding this site were established decades prior to Hurricane Ian and planned to continue to be both residential and commercial development. Currently the surrounding properties are mostly vacant or significantly damaged and uninhabitable due to the impacts of the hurricane. The property to the north and west was previously Gulf Westwind Condominium, a residential condominium, to the south across Estero Blvd. was the Junkanoo, a longtime Fort Myres Beach restaurant and to the east across Voorhis St. was the Fort Myers Beach Fire Department Administration Building and residential uses.

As outlined within the Development Standards Table on the MCP, the proposed build-to lines along the two frontages for the site and setbacks for side and rear yards are:

- Build-to line:
 - Estero Blvd.: 0 - 90 feet
- Setbacks:
 - Street (Voorhis St.): 0 feet
 - Side/Rear: Primary: 0 feet; Accessory: 3 feet

The development standards, inclusive of the build-to lines and setbacks proposed, further ensure a compatible use adjacent to the heavily travelled Estero Boulevard and adjacent property uses. The surrounding properties, like so many other properties on the island, sustained significant damage due to Hurricane Ian. The multi-family development to the north and west, the commercial and residential parcels to the east and south are in varying stages of the redevelopment process. The convenience store with fueling stations has a proven track record as a compatible use to this area of the island which is evidenced by the many years it serviced the needs of both residents and visitors alike.

Development order approval will include code compliant landscaping throughout the property. Buffers for the site are not required for the portions adjacent to the Estero Blvd., Voorhis St. public rights-of-way, and the parking lot to the southwest. A perimeter buffer will be required along the northeast and northwest property lines where it abuts the Gulf Westwind multi-family buildings. The minimum required buffer will be a type C as required by LDC Sec. 10-416 and detailed at the time of Development Order approval. The dumpster enclosure, located on the north side of the property will be screened as required by LDC.



Prior to Hurricane Ian, the existing convenience store and a health/fitness facility occupied the previous building which measured approximately 6,234 square feet. The proposed building will be approximately 5,000 square feet allowing for the reconfiguration of the site as depicted through the MCP to accommodate 18 parking spaces at the perimeter of the building, appropriate width drive aisles throughout the site and appropriate landscaping to continue to be compatible with the surrounding uses, while creating a safe, attractive development.

The previously established use of a convenience store has a proven history of being compatible at this location with the surrounding roadways, restaurants and residential uses over several decades. The proposed development standards, applicable buffering, and landscaping outlined within the proposed CPD will continue to ensure the new convenience store use remains compatible.



**THE FOLLOWING ADDRESSES APPLICABLE SECTIONS PROVIDED FOR IN THE
PLANNED DEVELOPMENT APPLICATION – SUPPLEMENT PH-D FORM:**

A. COMPREHENSIVE PLAN AMENDMENTS

The following Comprehensive Plan Amendments are pending and could affect the future use of this property:

- Mixed Use Districts Designation – Civic Center & Coconut Village RV Park District



The applicant is aware that the town is currently in the beginning stages of amending their Future Land Use Map (FLUM) designation. As of the date of this submittal, the town is considering a Future Land Use change for the subject property that would remove the property from the Boulevard FLUM designation and place the property within the “Civic Center & Coconut Village RV Park District” FLUM designation. The applicant intends to comply with and be consistent with all land use regulations that are in place

during the process of this application. Currently, the Town does not have a definite timeline for approval and implementation of the proposed changes and the applicant desires to move forward with this petition. The applicant intends to be generally consistent with the existing Boulevard FLUM designation, while also taking into consideration the current drafted language for the proposed “Civic Center & Coconut Village RV Park District” land use designation that may be appropriate and beneficial to all parties.



B. PHASING OF CONSTRUCTION

The development is to be constructed in a single phase.



C. COMPREHENSIVE PLAN COMPLIANCE

COMMUNITY DESIGN ELEMENT:

OBJECTIVE 1-A ESTERO BOULEVARD — Improve the functioning and appearance of Estero Boulevard as the premier public space and primary circulation route of Fort Myers Beach.

POLICY 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

The redevelopment plan proposes enhancements and site alternations to the frontage along Estero Blvd. as well as throughout the site. These enhancements and alternations include access management, relocation of parking to be adjacent to the building rather than at the front of the site, defined sidewalk area along Estero Blvd, transit stop at Estero Blvd., and buffer/landscaping throughout the site. Due to the limited size of the site, the proposed building is smaller than the original building enabling parking to be relocated so that vehicular traffic will not be backing out of the parking spaces from the front of the property at the Estero Blvd. entrance. The MCP proposes to extend the sidewalk from Estero Blvd. along Voorhis St. to the convenience store, thereby creating a more pedestrian friendly environment. Although the fuel pumps will remain located between the front of the building and Estero Blvd., the traffic pattern will be improved through the elimination of the parking at the front of the property and their new orientation provides for safer and efficient movements to and from the property. The redevelopment plan also proposes maintaining the two access points from Voorhis Street to encourage traffic flow off of Estero Blvd. and allowing access to the convenience store without the need to also maneuver around the fueling stations.

The proposed enhancements through the redevelopment of the site create a development with improved accessibility and safety for pedestrians, while improving the appearance for residents and visitors on the primary circulation route of Fort Myers Beach, thus supporting the “Estero Blvd” vision as described in Objective 1-A and Policy 1-A-1 of the Fort Myers Beach Comprehensive Plan.

FUTURE LAND USE ELEMENT:

GOAL 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.

POLICY 4-B-5: BOULEVARD A mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanent. To obtain approval for a new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contributed to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process.



POLICY 4-C-2: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5.

The project site is located within the Commercial Boulevard Zoning District which allows a maximum floor area ratio (FAR) of 1.0. The subject property is comprised of 30,291 +/- sq. ft. (0.70 +/- acres). The CPD proposes a maximum FAR of 0.17, which would allow for a maximum building area of approximately 5,000 sq. ft. The proposed floor area ratio proposed by this rezone from the Commercial Boulevard Zoning District to the CPD Zoning District complies with Fort Myers Beach’s Comprehensive Plan Policy 4-C-2.

POLICY 4-C-3. iv. In the “Boulevard” category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.

The proposed redevelopment of the previously established convenience store is a permissible use. In order to redevelop and to create a more resilient property it is necessary to seek a rezoning to CPD through the planned development process. This will enable development that is sensitive to nearby residential uses and more compliant with design concepts of the Comprehensive Plan and the Land Development Code.

POLICY 4-C-3. v. The following principles shall be considered by the town when evaluating requests for new commercial uses:

- a. Shopping and services for residents and overnight guests are strongly preferred over shopping and services that will attract additional day visitors during peak-season congestion.**
- b. Shopping and services that contribute to the pedestrian character of the town are strongly preferred over buildings designed primarily for vehicular access.**

The previously established convenience store with fueling station provided necessary goods to the island residents and visitors for decades. The proposed redevelopment of the site will provide a much-needed resource for the island residents, workers, and visitors to meet their everyday needs, while not being a venue to attract day visitors to the island. The potential EV charging station, bike racks, and existing nearby transit stop support the desire for alternative modes of transportation both on and off the island. The redevelopment of the site supports Policy 4-C-3 and the needs of island residents and guests.



OBJECTIVE 4-D POST-DISASTER REDEVELOPMENT — Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of floodproofing, by requiring redevelopment activities to meet stricter standards.

For flood- and wind-resistance, and by improving the current post-disaster build back policy.

The new commercial building will be more resilient, complying with the latest and more stringent Florida Building Code. Additionally, state and federal flood regulations will be followed, improving the resiliency of the new structures.

COASTAL MANAGEMENT ELEMENT:

GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.

POLICY 5-A-1 The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.

The proposed redevelopment of the site will be in compliance with all applicable federal, state and local regulations to develop a resilient commercial property to serve the residents and visitors of Fort Myers Beach.

TRANSPORTATION ELEMENT

GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off-island systems, and parking options matched to road capacity.

POLICY 7-D-3 ALTERNATE TRAVEL MODES

The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas.

Due to the site's location on Estero Blvd., the main throughfare on the island, visitors and residents alike, no matter what mode of transportation they use will pass by this prime location. To better serve the public the proposed site design includes a new clearly marked parking lot oriented more appropriately for vehicular use, reconstructed existing driveways along Estero Blvd. and Voorhis Street, proper parking lot lighting, and an unobstructed sidewalk with nearby street crossings. To encourage use of alternate travel modes, the development will provide bike racks and a new sidewalk along a portion of Voorhis Street to the existing transit stop located along Estero Blvd., at the southeast corner of the subject site. The potential installation of two electric vehicle charging stations is also being evaluated as part of the redevelopment.



UTILITIES ELEMENT

GOAL 8: To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

POLICY 8-A-1 Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.

The proposed development will connect service to water and sewer utilities as available through the Town of Fort Myers Beach.



D. DESIGN STANDARDS COMPLIANCE

The proposed post-hurricane redevelopment of the subject site to rebuild the 7-Eleven convenience store will be generally consistent with the overall purpose and intent of the commercial design standards provided under LDC Section 34-991. The following outlines compliance with the specified design standards within LDC Sections 34-994 through 34-997:

Based on the architectural representations of the new 7-Eleven (See the required Architectural Elevations included in the submittal documents), the proposed exterior walls will be a combination of stucco and fiber cement panels/boards, which are identified as an appropriate finish material under LDC Section 34-994 for all principal facades facing public rights-of-ways. The structure will be dry-floodproofed and elements integrated into the overall building design so as to be “visually unobtrusive” assuring compliance with the subject property being within FIRM Zones: VE 14, AE 13 and AE 12. The principal façade will be designed and compliant with the requirements for transparent windows, glazing, and shape.

The proposed building will be compliant with those applicable portions of LDC Section 34-995 addressing “Principal Façade Walls” standards. Through the use of elements such as windows, awnings, façade projections and entrances, 7-Eleven is proposing to utilize various elements in order to ensure compliance with the design standard requirements contained within the LDC.

LDC Section 34-996 specifically allows for a variety of roof types. The proposed 7-Eleven is designed with a flat roof and parapet, which is permitted under subsection (b). Above the front entrance facing Estero Blvd., an architectural “entry tower” with a hip roof is proposed. The “entry tower” roof consists of a standing seam metal roof, which is permitted under subsection (c).

Due to the existing infrastructure and the limited lot size, the proposed redevelopment cannot support plazas and courtyards. The redeveloped project provides for internal pedestrian passages to the existing sidewalk along Estero Boulevard and the proposed sidewalk along Voorhis St., thus meeting the intent of LDC Section 34-997(d).



E. DECISION-MAKING COMPLIANCE

(1) Whether there exists an error or ambiguity which must be corrected.

There are no known errors or ambiguity that must be corrected in relation to the requested rezoning from Commercial Boulevard to CPD. If any exist, they will be discussed and resolved during staff review and public hearings before the Local Planning Agency (LPA) and Town Council. Utilizing the proposed CPD rezone request, reductions or elimination of any existing non-conformities will be corrected as applicable.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

The Town of Fort Myers Beach has been devastated by Hurricane Ian. The proposed rezoning will allow for the rebuilding of a prior 7-Eleven convenience store with gas pumps and potentially electric charging stations, which enables the town to return to normal activities with the conveniences the residents and visitors previously enjoyed and expect moving forward.

(3) The impact of a proposed change on the intent of this chapter.

The proposed rezoning change to CPD is consistent with the purpose and intent of the zoning chapter of the Land Development Code (LDC). The CPD will encourage and promote the redevelopment of a destroyed convenience store business that is needed in the community, reduce or eliminate prior non-conformities as applicable, and provide for a more resilient and improved development within the Boulevard FLU designation. Through the rezoning process allowed under this chapter and subsequent development order review and approvals, the new 7-Eleven will not negatively impact the community's health, safety, and general welfare.

(4) The testimony of any applicant.

The professional experts retained to support the petition will provide future testimony during the appropriate public hearings.

(5) The recommendation of staff and of the local planning agency.

The petition will be reviewed by staff and subsequent testimony during the public hearing process before the Local Planning Agency and recommendations provided to the Town Council.

(6) The testimony of the public.

The public will be provided with the opportunity to testify before the LPA and Town Council. Such testimony will be evaluated as applicable and appropriate to the request for the LPA's recommendation and Town Council's decision.



(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Please see Section C above, which provides the narrative that the petition is consistent with the town's comprehensive plan.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

The rezoning request and the associated commercial use, specifically the proposed redevelopment of a convenience retail store with gas pumps and electric vehicle charging stations, is ideal for the location. The site was previously developed with a convenience store with gas pumps and a health/fitness facility supporting the surrounding residents' and visitors' needs. The subject property is located in an area of the town with a history of a mixture of commercial and residential uses and is being considered as a future mixed-use node under the update to the Comprehensive Plan.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

All urban services were in place for the prior existing retail store use and remain in place to adequately serve the subject site.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

The subject property was previously developed and has been subsequently cleared of all existing site improvements, ground cover, and natural areas due to the catastrophic impacts of Hurricane Ian. No environmentally critical areas and natural resources exist on the site.

(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.

The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to person or property as the proposed uses, specifically the convenience retail use existed prior to the catastrophic events of Hurricane Ian. There are no known documented code enforcement cases indicating the prior convenience retail use was deemed a nuisance, hazardous, or caused detrimental effects to the community. The current adjacent surrounding uses consist of public rights-of-way (Estero Boulevard and Voorhis Avenue) and a residential condominium. All proposed setbacks, buffers, and open space areas are consistent with the standards provided for within the Land Development Code or are suitably proposed and complementary to the mixed-use development pattern located in this area of the town.



(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.

Based on the fact the subject property supported a previously existing convenience store use prior to Hurricane Ian, the proposed request does not create any burden upon existing transportation or other services and facilities.

(13) For planned development rezonings, see § 34-216 for additional considerations.

This request to rezone the subject property from Downtown to Commercial Planned Development (CPD) will be presented at public hearings before the local planning agency and the town council consistent with LDC Section 34-216(a)(1). As demonstrated throughout this narrative the proposed CPD meets the following findings criteria under LDC Section 34-216(2):

- a. The proposed use, and more specifically a convenience retail use with fuel station and possible EV charging station, as provided for within the Schedule of Uses are appropriate to the subject location due to a 7-Eleven with fuel pumps existed on the property for decades without issue prior to Hurricane Ian.
- b. Sufficient safeguards to the public interest are or will be provided through applicable special conditions that are either depicted on the concept plan, described within the above narrative or agreed upon during the public hearing process.
- c. Sufficient safeguards to the public interest are or will be provided through applicable special conditions that are depicted on the concept plan, described within the above narrative or agreed upon during the public hearing process.
- d. The proposed rezoning request meets specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
 1. Policy 4-C-3: See Section "C" within the above narrative.
 2. Policies 4-B-5 and 4-C-3: See Section "C" within the above narrative.
 3. Policy 4-C-4: Proposed height is not taller than the standard height limit of 30' allowed under the Land Development Code.
 4. Policy 4-C-8: Density transfers. Not applicable.
 5. Policy 4-E-1: The existing development was consistent with and well below the allowed intensity (FAR 1.0) prior to the natural disaster (Hurricane Ian). Any proposed development will be consistent with the maximum intensity allowed under the comprehensive plan and LDC.
 6. Policy 7-J-2: The proposed rezone request is not a major rezoning as the request applies to a property that is less than one acre in area. Additionally, the proposed future redevelopment of an existing convenience retail store of similar size would not contribute to any additional major traffic impact on the surrounding network.



CONCLUSION:

As detailed in the above narrative, supporting application documents, and the proposed MCP, the application demonstrates consistency and compliance with both the Fort Myers Beach Comprehensive Plan and Land Development Code. Through the redevelopment under the unique aspects of the subject property, reduction of any applicable existing non-conformities and with proposed structures compliant with today's Florida Building Codes and FEMA standards, the developer will provide a project that is more resilient and an improvement for the public health and safety for the citizens of Fort Myers Beach and its visitors. This rezoning effort will help bring back a much-needed convenience store on the island, helping to improve living conditions and further supporting the public's overall health, safety and welfare.



**3051 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone Application**

SECTION F: SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS

DEVIATION #1 seeks relief from the driveway separation requirements of LDC Section 10-285 along Estero Boulevard and Voorhis Street. The deviation would allow driveway separation to be a minimum of 97.7 feet along Estero Blvd from Voorhis St., and a minimum of 73 feet from the Estero Boulevard/Voorhis Street intersection to the most southern driveway on Voorhis Street.

Justification: The proposed driveways (accessways) onto Estero Boulevard and Voorhis Street existed prior to Hurricane Ian and the destruction of the prior convenience store/commercial structure. As shown on the MCP, these three accessways are to remain in the same locations as previously existed prior to Hurricane Ian. The proposed location of the redeveloped convenience store and supporting facilities is substantially consistent with the prior location of the prior convenience store/commercial structure and as such justifies maintaining the alignment and location of the accessways. Additionally, maintaining accessways from Estero Boulevard and Voorhis Street in these locations is appropriate due to the unique angular configuration of the subject property and the need to properly manage and maintain vehicular traffic, especially for fuel/delivery trucks, waste management trucks and vehicles accessing fuel pumps. The proposed configuration also provides accessway widths that meet current land development regulations as well as improving pedestrian connectivity with the addition of a sidewalk along Voorhis Street to the site and the relocation of the parking spaces from the front of the site to the building perimeter. There are no known documented issues or incidents with the accessway locations prior to Hurricane Ian. The proposed driveway locations still provide a safe and appropriately manageable traffic circulation that achieves general consistency with the intent of LDC Section 10-285 to provide as much connection separation while keeping the proposed redevelopment feasible and to not negatively impact the public's health, safety, and welfare.

DEVIATION #2 seeks relief from the minimum width requirement of 15 feet for a type "C" buffer under LDC Section 10-416 (d)(3) Table 10-9. The deviation would allow a min width of 3 feet for a portion of the required buffer along the northeastern boundary.

Justification: A 15-foot-wide type "C" buffer is required along the northeast boundary of the proposed planned development. The proposed MCP indicates the location of the required dumpster enclosure and electric vehicle (EV) infrastructure within a small portion of this required buffer area. The proposed reconstructed dumpster enclosure is in the same location that it existed prior to the impacts of Hurricane Ian. The reconstructed dumpster enclosure positioned in the same location as it previously existed will require a reduction in the width of the buffer to a minimum of 3 feet and for a length of no more than 26 feet along the northeastern boundary. There are no known documented issues, nuisances, or complaints regarding the prior location of the dumpster enclosure. The addition of a wall and appropriately placed landscaping plantings along the northeastern boundary buffer, will ensure any potential effects associated with the reconstruction of the dumpster and EV infrastructure in this area will be reduced or eliminated. The granting of this deviation to reduce the buffer width for a small portion of the northwestern boundary will allow the required dumpster enclosure to be reconstructed in the same location as it existed before Hurricane Ian and provide for much needed EV charging options within the town. Appropriate landscaping



for this portion of the buffer and providing a new wall within the buffer will also help ensure there are no negative impacts to the public's health, safety, and welfare.

DEVIATION #3 seeks relief from LDC Section 34-704(a) which requires build-to lines for Estero Boulevard to be established at five to ten feet from front property lines. The deviation would allow for a build-to line of five to ninety feet for Estero Boulevard.

Justification: Prior to Hurricane Ian the subject property was developed with a 6,250± sq. ft. commercial building which setback approximately 90' from Estero Blvd, the building contained a convenience store and a health/fitness facility with fuel stations located between the building and Estero Boulevard. The site is located within the Commercial Boulevard (CB) zoning designation which has build-to lines for Estero Boulevard established at five to ten feet from front property lines.

The proposed redevelopment has been designed with the building, property access and infrastructure for the fuel tanks and pumps remaining in the same basic location as they were prior to the storm. The building is approximately 89' from the Estero Boulevard property line, with type "C" buffers and a wall along the residential multi-family zoned properties at the northeast and northwest boundaries. Parking is proposed to be at the front and rear of the building with a drive aisle allowing vehicular access from the front to the rear of the property. The use of a convenience store with fuel station has a proven history of being successful in serving the community as it was previously designed.

Through the Post-Disaster build back policy, the building will comply with all current building, life safety and accessibility codes. Based on the above justification, the granting of this deviation from the Commercial Boulevard build-to line to allow for a five – ninety feet build-to line at Estero Boulevard will not be injurious to the neighborhood or negatively impact the overall health, safety and welfare of the island or its residents.

DEVIATION #4 seeks relief from LDC Section 34-706(d) which requires properties that front on Estero Boulevard and have access to a secondary street, to take access from the secondary street, except when the requirement would prohibit reasonable access. The deviation allows driveway access to remain as existing from Estero Boulevard and Voorhis Street.

Justification: Prior to Hurricane Ian, accessway locations onto the subject property were located along Estero Boulevard and two on Voorhis Street. The proposed redevelopment has been designed with the building, property access and infrastructure for the fuel tanks and pumps remaining in the same basic location as they were prior to the storm and as a result, the accessway locations are also in the same locations. These accessway locations have demonstrated over time to provide safe and efficient vehicular access to the convenience store parking, fueling pumps, and service areas. The proposed site layout provides for an internal drive aisle allowing vehicular access from Estero Boulevard to the rear of the property allowing trucks delivering supplies, fuel and accessing the refuse container, and the ability to maneuver the site in an unobstructed manner.

The granting of this deviation to allow the proposed driveway locations to remain as they generally existed prior to Hurricane Ian will help enable the redevelopment of the convenience store and fueling stations. Their locations will continue to provide a safe, efficient, and manageable vehicular circulation to and from the property with no negative impacts the public's health, safety, and welfare.



DEVIATION #5 seeks relief from LDC Section 34-704(b)(1)(a) which requires minimum street setbacks for streets other than Estero Boulevard to be ten feet. The deviation would allow a minimum of a zero (0) foot setback from Voorhis Street.

Justification: The proposed site design locates the convenience store building with a zero (0) foot setback at the property line adjacent to Voorhis Street. This location allows for additional separation and green space between the residentially zoned property to the west, which allows for a 15 foot wide type C buffer. Having the building closer to the Voorhis Street property line, as detailed on the MCP, also allows for a internal drive aisle designed for an improved and efficient lane for delivery and service trucks.

The requested deviation to allow for a reduction in the street setback from a minimum of 10 feet to 0 feet, provides relief to address the unique constraints of redeveloping a site after a natural disaster. The granting of this deviation will not negatively impact the health, safety and welfare of the community.

DEVIATION #6 seeks relief from LDC Section 34-1744(b)(4)(d) which requires screening of refuse containers to not exceed six feet height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven feet six inches (7' 6") in height.

Justification: The proposed site design, as detailed on the MCP, locates the refuse container in approximately the same location as it was prior to Hurricane Ian. This location is appropriate in that it allows access to the container via a continuous drive aisle around the building from Estero Boulevard and Voorhis Street. The refuse container will be separated from the adjacent multi-family properties by a Type "C" buffer with a wall. To provide additional screening of the refuse container from adjacent residential properties and to help further contain any solid waste and recycling items and the dumpsters themselves, the container screening is proposed to exceed the six feet height restriction by 1.5 feet. Granting of this deviation to allow the refuse container screening (enclosure) to be a maximum of seven feet six inches (7' 6") in height will provide a benefit to the adjacent properties and not be injurious to the neighborhood or negatively impact the overall health, safety and welfare of the island or its residents.

GENERAL NOTES:

- SCHEDULE OF USES:

COMMERCIAL

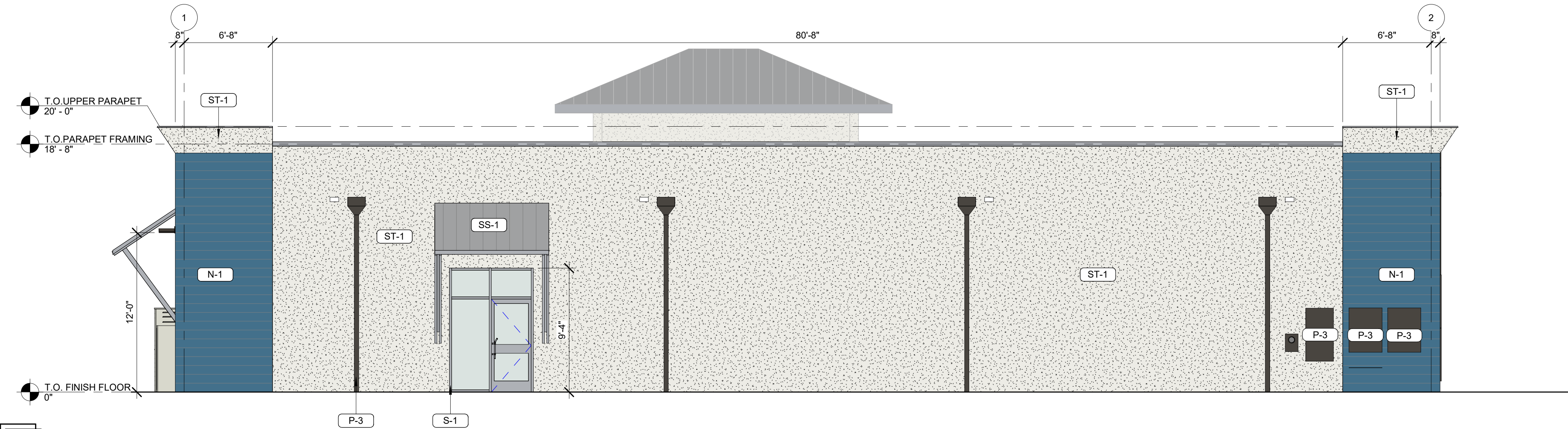
- DEVIATIONS:

- | LEGEND | |
|---|--------------------|
|  | CPD BOUNDARY |
|  | BUILDING FOOTPRINT |
|  | DRIVEWAY |
|  | CONCRETE |
|  | INGRESS / EGRESS |
|  | DEVIATION |

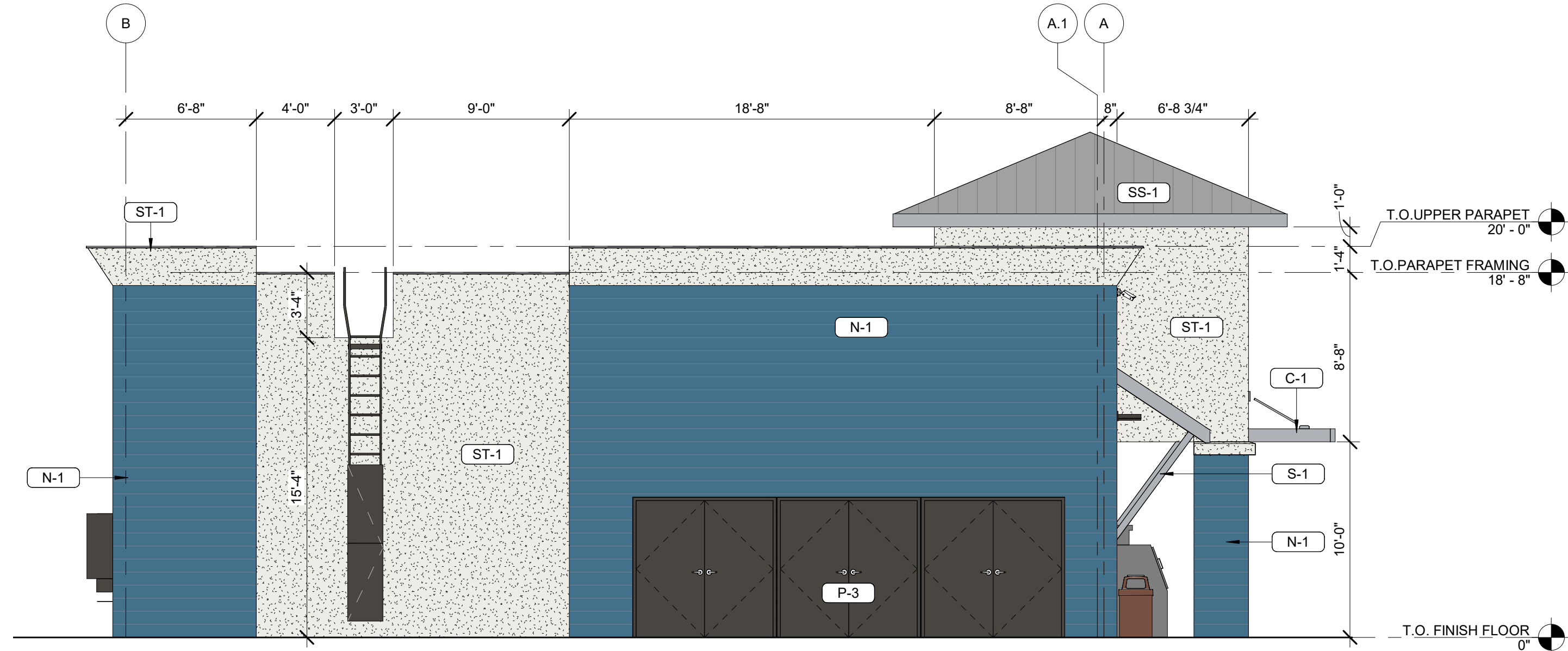
DATUM NOTE:

ALL ELEVATIONS REFERENCE NAVD88 VERTICAL DATUM.
APPROXIMATE CONVERSION FOR PROJECT AREA: NAVD88 + 1.18' = NGVD29
ANY DATUM CONVERSIONS SHOULD BE CONFIRMED BY A LICENSED
SURVEYOR PRIOR TO USE.

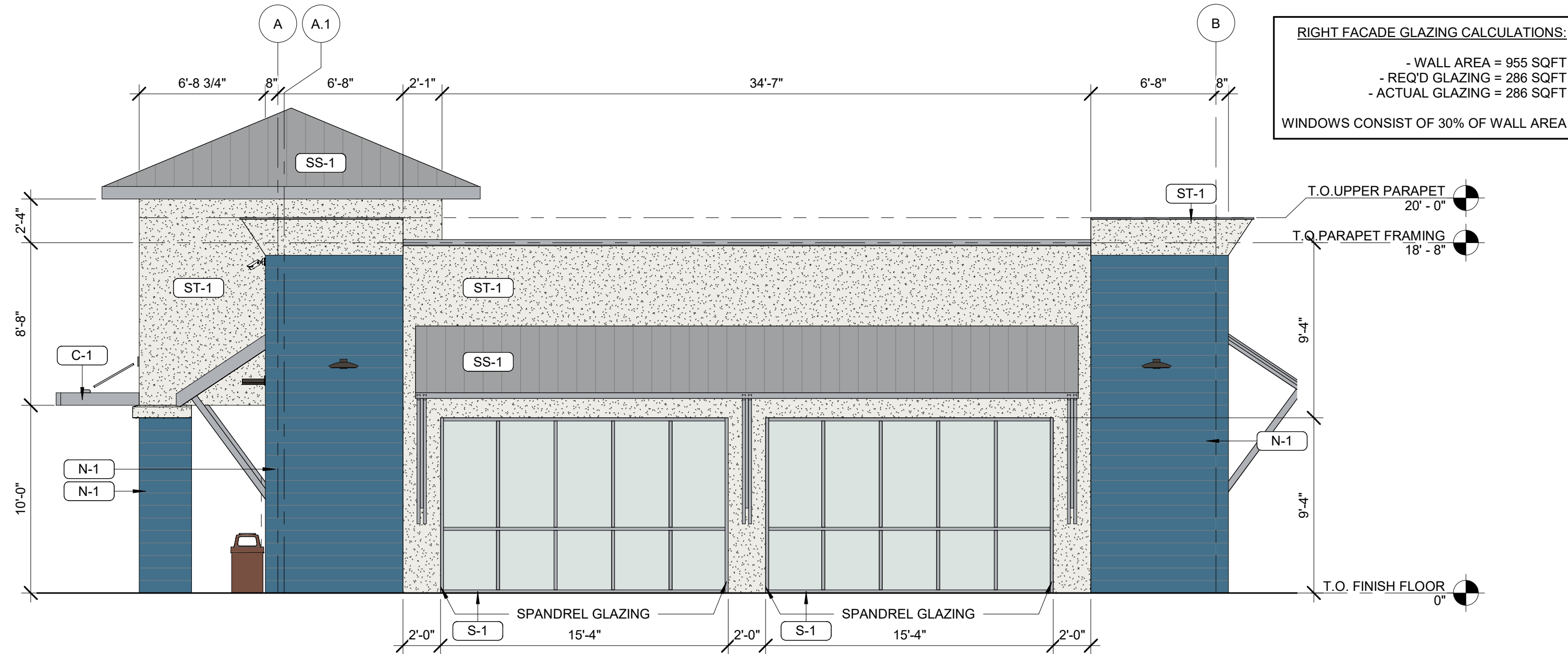
Page 197 of 681



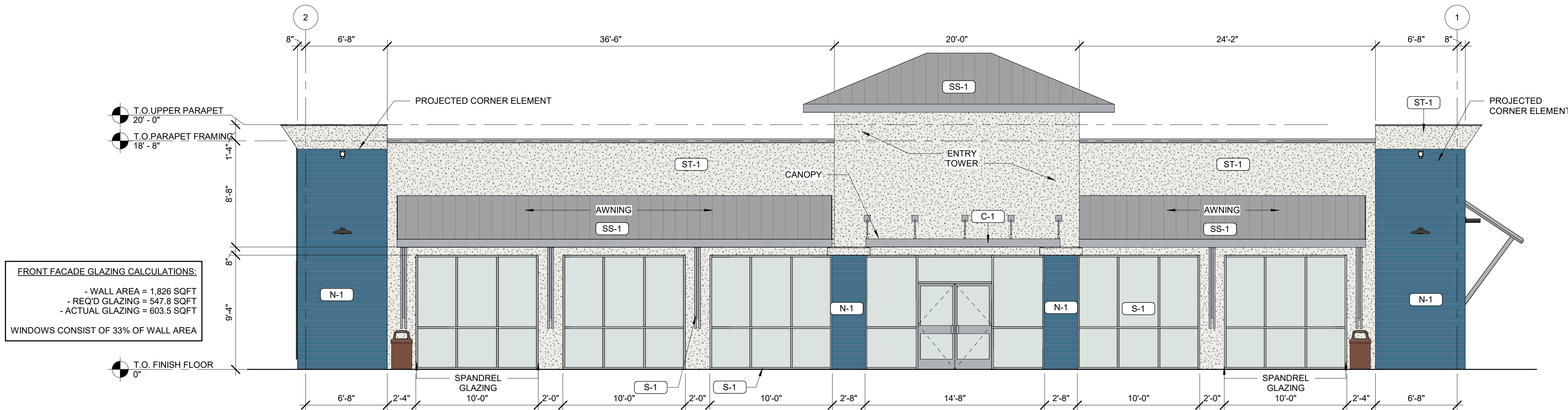
4
R0.01
ELEVATION - REAR (EAST)
3/16" = 1'-0"



3
R0.01
ELEVATION - LEFT (NORTH)
3/16" = 1'-0"



2
R0.01
ELEVATION - RIGHT (SOUTH)
3/16" = 1'-0"



1
R0.01
ELEVATION - FRONT (WEST)
3/16" = 1'-0"

EXTERIOR MATERIALS SCHEDULE			
(NOT ALL MATERIALS IN SCHEDULE ARE USED)			
NO.	MATERIAL	MANUFACTURER	COLOR
MR-1	MEMBRANE ROOFING	DUROLAST	WHITE
N-1	FIBER CEMENT PANEL	NICHHA	DOWN POUR SW 6516
P-3	EXTERIOR HM DOORS, FRAMES, TRASH ENCLOSURE GATE, GRAVEL GUARDS, AND LIGHT POLES	SHERWIN WILLIAMS	SEAL SKIN SW 7675
S-1	ALUMINUM STOREFRONT GLAZING	KAWNEER	CLEAR
C-1	PREFINISHED ALUMINUM CANOPY	MAPES LUMISHADE CANOPY	CLEAR ANODIZED
SS-1	STANDING SEAM METAL ROOF	BERRIDGE	LEAD COTE
ST-1	STUCCO	DRYVIT OR EQ	PAINTED (P-1) PURE WHITE
ST-2	STUCCO	DRYVIT OR EQ	NOT USED
AL-1	ALUMINUM CANOPY BRACKETS	TBD	CLEAR ANODIZED

7-ELEVEN #1055519
3051 ESTERO BLVD
FORT MYERS BEACH, FL 33931

CREIGHTON COMMERCIAL DEVELOPMENT
900 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL, FL 33991

REVIEW BOARD ELEVATIONS

CREIGHTON
COMMERCIAL DEVELOPMENT

BOTI
ARCHITECTURE
504 W. COLLEGE ST.
SPRINGFIELD, MO 65806
TEL: 877.297.2684
www.boti.studio

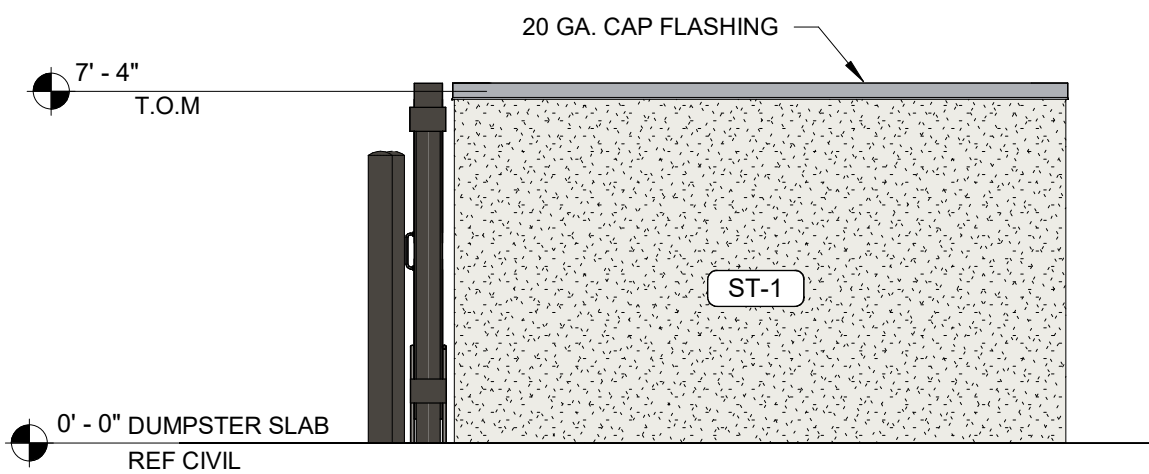
Drawings and Specifications as Instruments of service are and shall remain the property of the Architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the Architect.

Contractor is responsible for confirming and correcting dimensions at job site. The Architect will not be responsible for construction means, methods, techniques, sequences or procedures, estimates, reports or other documents or instruments relating to or intended to be used for any part or parts of the project.

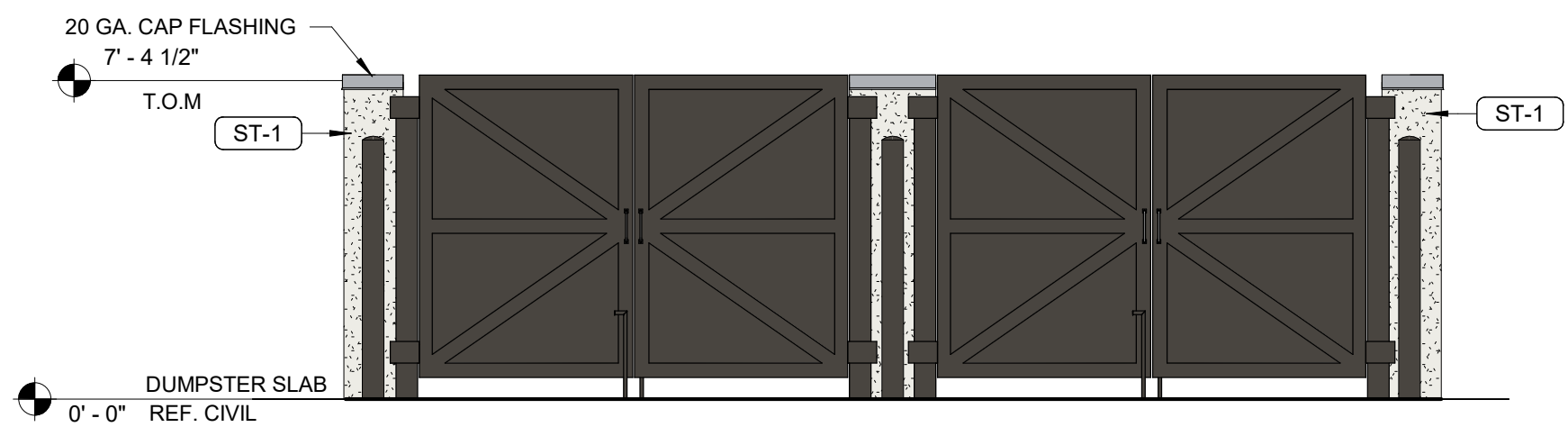
NOT FOR CONSTRUCTION

07/25/2023

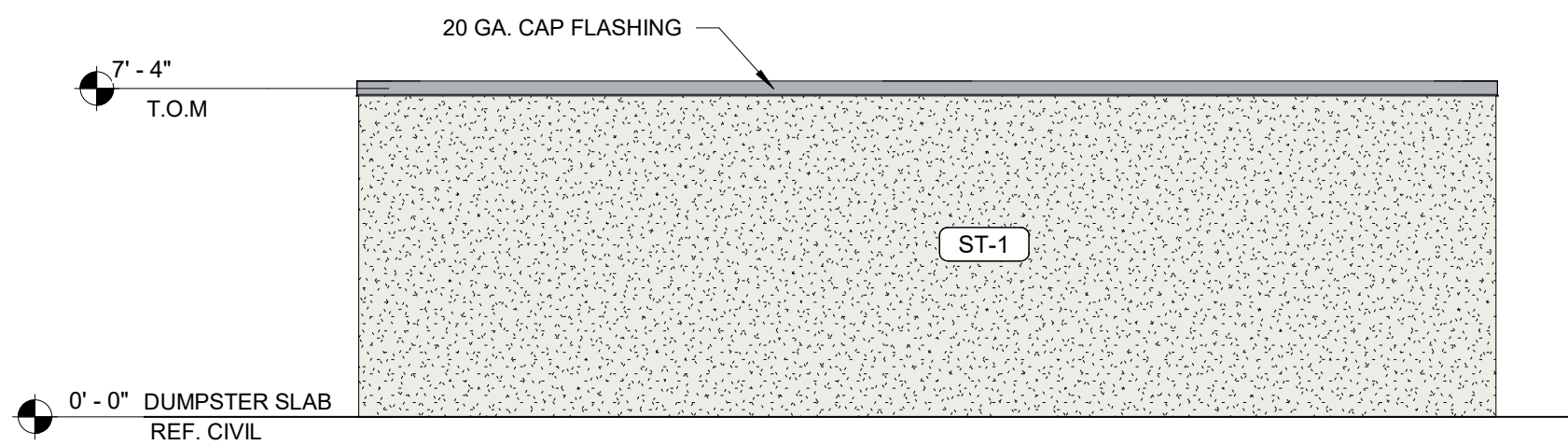
JOB#: 23044
DATE: 07/25/2023
SHEET: R0.01



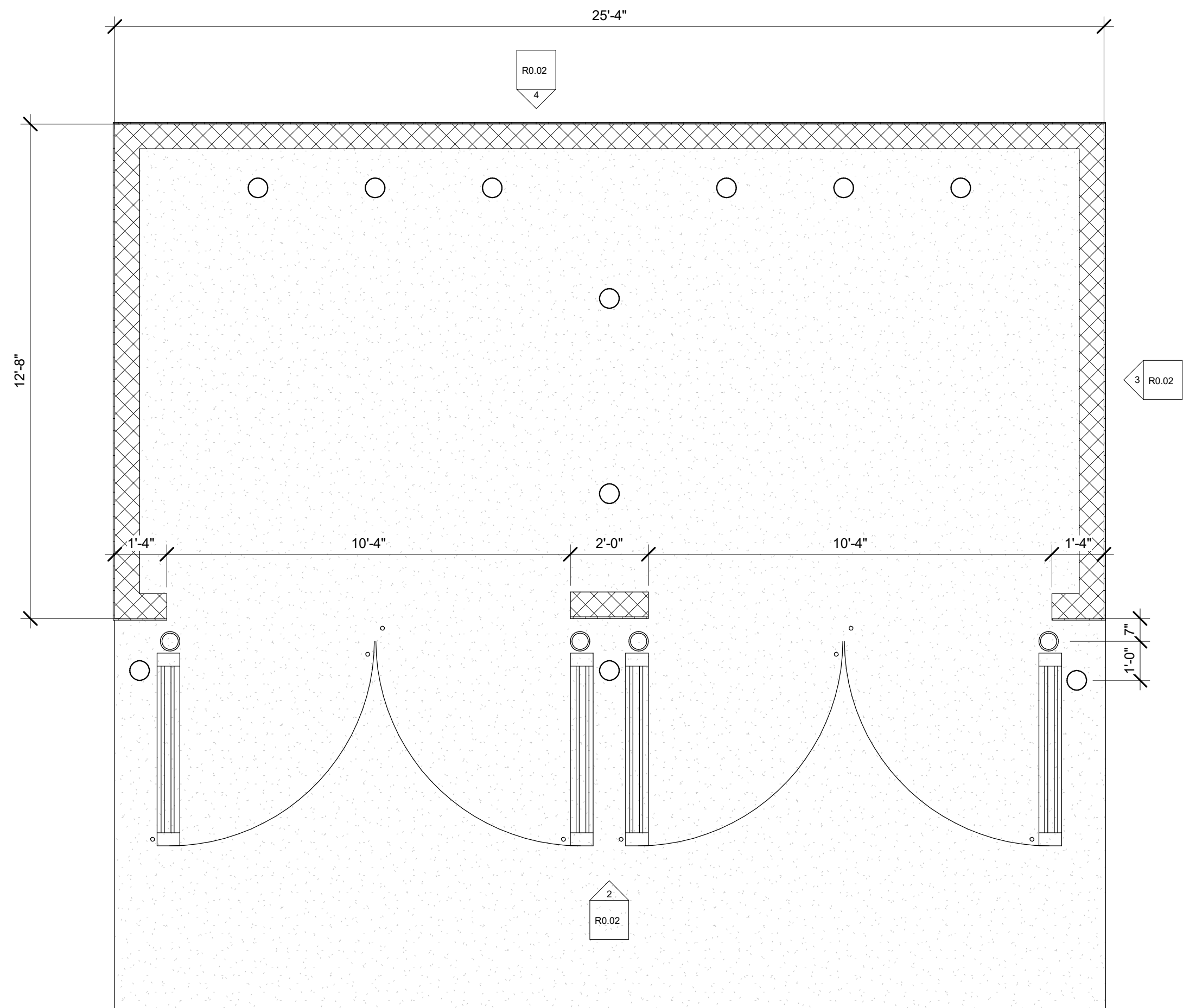
3 SIDE ELEVATION DUMPSTER ENCL. (EAST)
R0.02 $1/4" = 1'-0"$



2 **GATE ELEVATION DUMPSTER ENCL. (NORTH)**
R0.02 **1/4" = 1'-0"**



4 REAR ELEVATION DUMPSTER ENCL. (SOUTH)
R0.02 1/4" = 1'-0"



1 DUMPSTER ENCLOSURE PLAN
R0.02 **3/8" = 1'-0"**

REV.#	DATE	DESCRIPTION
		7-ELEVEN #10555 I9 3051 ESTERO BLVD. FORT MYERS BEACH, FL. 33931
		CREIGHTON COMMERCIAL DEVELOPMENT
		900 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL, FL 33991
		REVIEW BOARD DUMPSTER ENCLOSURE
PROTO:7043 CST 202-02		

CREIGHTON
COMMERCIAL DEVELOPMENT

B-T-A
ARCHITECTURE
504 W. COLLEGE ST.
SPRINGFIELD, MO 65806
TEL: 817.297.2684
www.bta-studio.com

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Contractor is responsible for confirming and correlating dimensions at all levels; the Architect will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project.

The seal and signature apply only to the document to which they are affixed and we expressly disclaim any responsibility for all other plans, specifications, estimates, reports or other documents or instruments relating to or intended to be used for any part or parts of the project.

NOT FOR CONSTRUCTION

07/25/2023

JOB#: 23044
DATE: 07/25/2023
SHEET:
R0.02



**NOT FOR
CONSTRUCTION**



1R002

3D RENDERING - STREET VIEW - RIGHT (SOUTHEAST)
N.T.S.

REV.#	DATE	DESCRIPTION

PROTO:7043 CST 2022-02

7-ELEVEN #24394
3051 ESTERO BLVD
FORT MYERS BEACH, FL 33931

CREIGHTON COMMERCIAL DEVELOPMENT
900 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL, FL 33991
TEL: 877.297.2684
www.boti.studio

3D RENDERINGS

CREIGHTON COMMERCIAL DEVELOPMENT

BOTI ARCHITECTURE
504 W. COLLEGE ST.
SPRINGFIELD, MO 65806
TEL: 877.297.2684
www.boti.studio

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The seal and signature apply only to the document to which they are affixed and we expressly disclaim any responsibility for all other plans, specifications, estimates, reports or other documents or instruments relating to or intended to be used for any part or parts of the project.

NOT FOR CONSTRUCTION

07/25/2023

JOB#: 23044
DATE: 07/25/2023
SHEET: R002



THE NEIGHBORHOOD COMPANY

3051 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD) Planned Development Rezone

SCHEDULE OF USES

RETAIL STORE, SMALL TO INCLUDE:

CONVENIENCE STORES WITH FUEL PUMPS (OPEN 24 HRS/7 DAYS)

TRAFFIC IMPACT STATEMENT

FOR

7-ELEVEN @ 3051 ESTERO BLVD

(PROJECT NO. F2308.16)

**PREPARED BY:
TR Transportation Consultants, Inc.
2726 Oak Ridge Court, Suite 5034
Fort Myers, Florida 33901
239-278-3090**

August 31, 2023

CONTENTS

- I. INTRODUCTION
- II. EXISTING CONDITIONS
- III. PROPOSED REDEVELOPMENT
- IV. TRIP GENERATION
- V. TRIP DISTRIBUTION
- VI. FUTURE TRAFFIC CONDITIONS
- VII. PROJECTED LEVEL OF SERVICE
- VIII. TURN LANE ANALYSIS
- IX. CONCLUSION

I. INTRODUCTION

TR Transportation Consultants, Inc. has prepared a traffic impact statement to fulfill requirements set forth by the Town of Fort Myers Beach for projects seeking approval for Development Order. The site is located at 3051 Estero Boulevard in the Town of Fort Myers Beach, Florida. The site location is illustrated on **Figure 1**.

The site was previously occupied by a 2,618 square foot 7-Eleven convenience store/gas station containing 4 refueling positions (2 fuel pumps) and a 3,013 square foot gym, both of which have been destroyed by hurricane Ian in late September of 2022. Upon approval of this local Development Order application, the subject site will be redeveloped with an approximate 4,700 square foot 7-Eleven convenience store/gas station containing 4 refueling positions (2 fuel pumps). Access to the overall site will continue to be provided to Estero Boulevard via a single connection and to Voorhis Street via two connections.

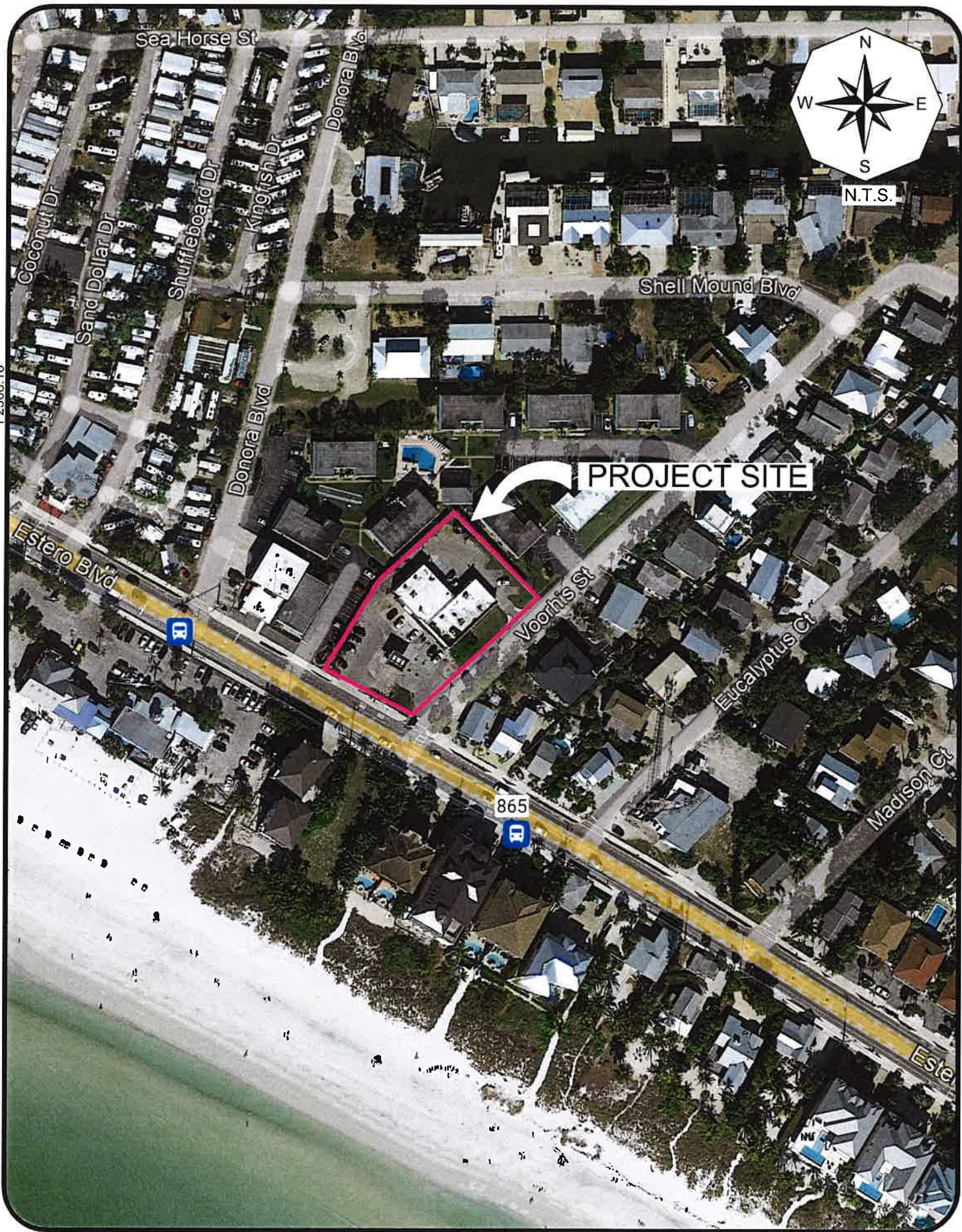
This report examines the impact of the redevelopment on the surrounding roadways. Trip generation and assignments to the site access driveways will be completed and analysis conducted to determine the impacts of the development on the surrounding streets.

II. EXISTING CONDITIONS

The subject site has been cleared but was previously occupied by a 2,618 square foot 7-Eleven convenience store/gas station containing 4 refueling positions (2 fuel pumps) and a 3,013 square foot gym. The overall site is bordered by Estero Boulevard to the south, Voorhis Street to the east, and by residential uses to the north and west.

Estero Boulevard is an east/west two-lane arterial roadway that borders the subject site to the south. Estero Boulevard has a posted speed limit of 25 mph and is under the jurisdiction of the Lee County Department of Transportation.

F2308.16



III. PROPOSED REDEVELOPMENT

The site was previously occupied by a 2,618 square foot 7-Eleven convenience store/gas station containing 4 refueling positions (2 fuel pumps) and a 3,013 square foot gym, both of which have been destroyed by hurricane Ian in late September of 2022. Upon approval of this local Development Order application, the subject site will be redeveloped with an approximate 4,700 square foot 7-Eleven convenience store/gas station containing 4 refueling positions (2 fuel pumps). **Table 1** summarizes the land uses utilized for the purposes of this analysis.

Table 1
Land Uses
7-Eleven @ 3051 Estero Blvd

Land Use	Approved	Proposed
7-Eleven Gas Station	2,618 Sq. Ft. w/ 4 Refuel Positions	4,700 Sq. Ft. w/ 4 Refuel Positions
Gym	3,013 Sq. Ft.	N/A

Access to the overall site will continue to be provided to Estero Boulevard via a single connection and to Voorhis Street via two connections.

IV. TRIP GENERATION

The trip generation for the approved and proposed redevelopment was determined by referencing the Institute of Transportation Engineer's (ITE) report, titled ***Trip Generation Manual***, 11th Edition. Land Use Code 945 (Convenience Store/Gas Station) was utilized for the trip generation purposes of the gasoline station based on the floor area of the convenience store. It is important to note that utilizing the floor area of the convenience store as opposed to the number of refueling positions results in the most conservative trip generation scenario for the approved and proposed 7-Eleven development. See attached trip generation comparison at the end of the Appendix. Land Use Code 492 (Health/Fitness Club) was utilized for the trip generation purposes of the previous gym

use one site. The equations utilized from these land uses are contained in the Appendix of this report for reference.

Table 2 outlines the anticipated weekday A.M. and P.M. peak hour and daily trip generation of the previous development on site. **Table 3** outlines the anticipated weekday A.M. and P.M. peak hour and daily trip generation of the development as currently proposed. Both tables also incorporated “pass-by” traffic associated with the gas station use under each scenario. ITE indicates an average “pass-by” traffic reduction for Land Use Code 945 of sixty percent (60%) during the weekday A.M. peak hour and fifty-six percent (56%) during the P.M. peak hour for gas stations containing between 2 and 8 refueling positions. The sites surveyed in the ITE report that formulate the trip generation for this use were based on sites typically located along major thoroughfares in larger metropolitan areas, and not in a beach community such as this site. This location has historically attracted a majority of the trips from the beach via foot traffic and the adjacent neighborhood. Estero Boulevard has a low peak hour traffic volume compared to other major thoroughfares where these convenience stores are typically located. This site is not anticipated to generate the peak hour trip generation as estimated by the ITE data. However, to be conservative, a reduction in trips due to pedestrian traffic was not included in this analysis.

Table 2
Trip Generation – Approved
7-Eleven @ 3051 Estero Blvd

Land Use	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Convenience Store/Gas Station (2,618 Sq. Ft.)	53	53	106	64	63	127	1,634
Gym (3,013 Sq. Ft.)	2	2	4	14	10	24	N/A
Total Trips	55	55	110	78	73	151	1,634
Less Pass-By Traffic	-32	-32	-64	-35	-35	-70	-980
Net New Trips	23	23	46	43	38	81	654

Table 3
Trip Generation – Proposed
7-Eleven @ 3051 Estero Blvd

Land Use	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Convenience Store/Gas Station (4,700 Sq. Ft.)	95	96	191	114	114	228	2,934
Less Pass-By Traffic	-57	-57	-114	-64	-64	-128	-1,760
Net New Trips	38	39	77	50	50	100	1,174

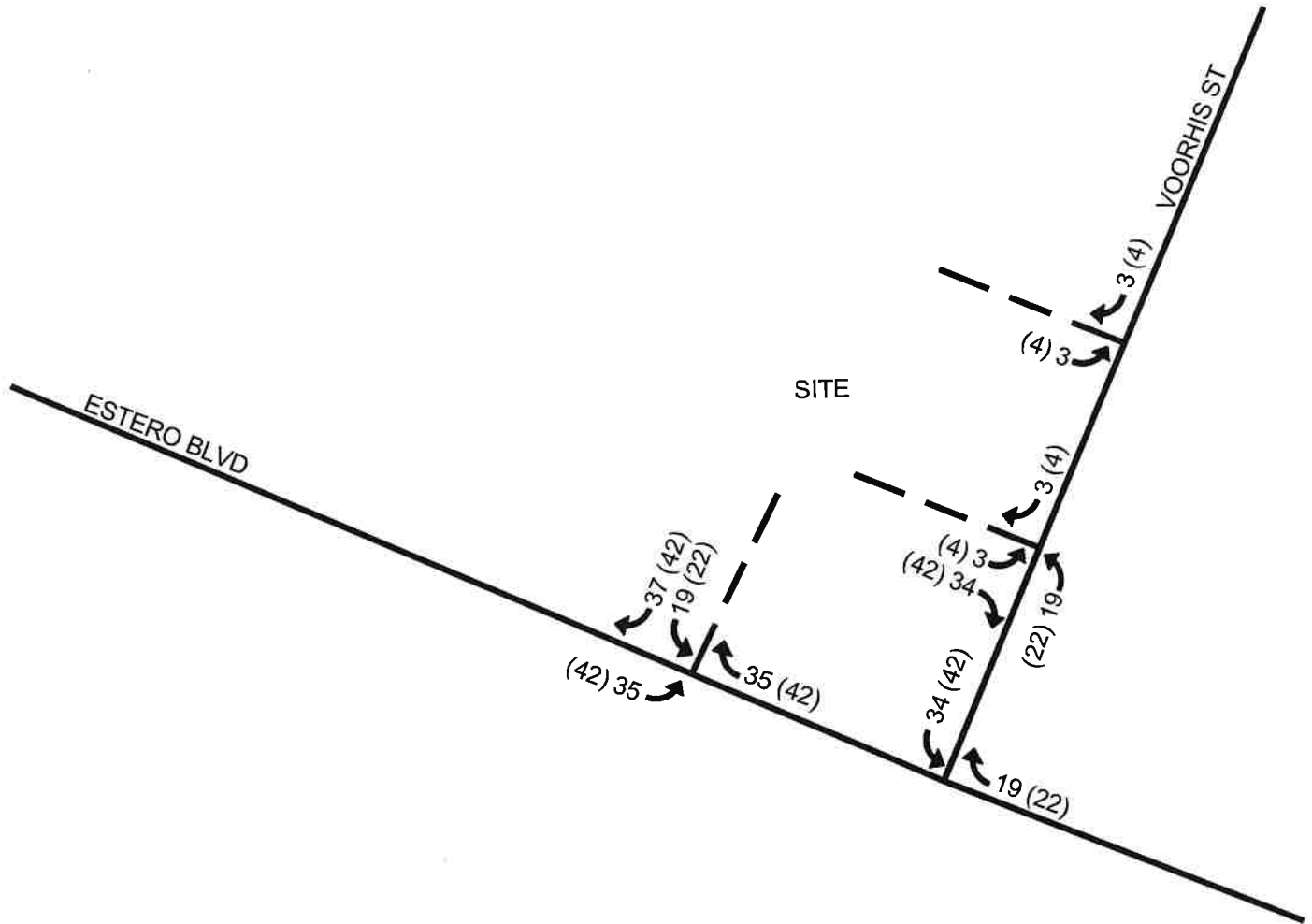
Table 4 illustrates the trip change when comparing the trip generation of the previous use on the subject site to the trip generation of the proposed use (Table 2 vs Table 3). The trip change shown in Table 4 was utilized in the Level of Service Analysis conducted as part of this report.

Table 4
Trip Generation Comparison– Approved vs Proposed
Table 2 vs Table 3

Land Use	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Proposed	38	39	77	50	50	100	1,174
Approved	-23	-23	-46	-43	-38	-81	-654
Trip Change	+15	+16	+31	+7	+12	+19	+520

V. TRIP DISTRIBUTION

The trips the proposed redeveloped site is anticipated to generate, as shown in Table 3, were then assigned to the surrounding roadway network. The net new trips anticipated to be added to the surrounding roadway network were assigned based upon the routes drivers are anticipated to utilize to approach the subject site. **Figure A-1**, included in the Appendix of this report, illustrates the percent project traffic distribution and assignment of the net new project trips. **Figure A-2**, included in the Appendix of this report, illustrates the percent project traffic distribution and assignment of pass-by trips, which was formulated based on the traffic counts conducted at Estero Boulevard and Palermo Circle intersection as part of FDOT's SR 865 Traffic Report. **Figure 2** illustrates the resulting assignment of all project related trips (net new + pass-by).



LEGEND

- ← 000 WEEKDAY AM PEAK HOUR TRAFFIC
- ← (000) WEEKDAY PM PEAK HOUR TRAFFIC

Table 1A, contained in the Appendix, was created to illustrate the adopted Level of Service volumes on the adjacent segment of Estero Boulevard, as determined by Lee County Department of Transportation. This table indicates which roadway links will experience a significant impact as a result of the additional trips (Table 4) from the proposed development order application. Significant impact is defined as any roadway projected to experience greater than 10% of the Peak Hour – Peak Direction Level of Service “C” volumes. The Level of Service Threshold volumes for all roadway links analyzed were obtained from the *Lee County Link Specific Level of Service Tables* provided by the Lee County Department of Transportation. Based on the information contained within Table 1A, none of the roadway links analyzed are anticipated to experience a significant impact as a result of the redeveloped 7-Eleven.

VI. FUTURE TRAFFIC CONDITIONS

A horizon year analysis of 2025 was selected as the analysis year to evaluate the future impacts this project will have on the surrounding roadway network. Based on this horizon year, a growth rate was applied to the existing traffic conditions for all roadway links in the study area. The growth rates were obtained through comparisons of annual traffic data obtained from the *FDOT's Florida Traffic Online* webpage. Based on the project distribution illustrated on Figure 2, the link data was analyzed for the year 2025 without the development and year 2025 with the development.

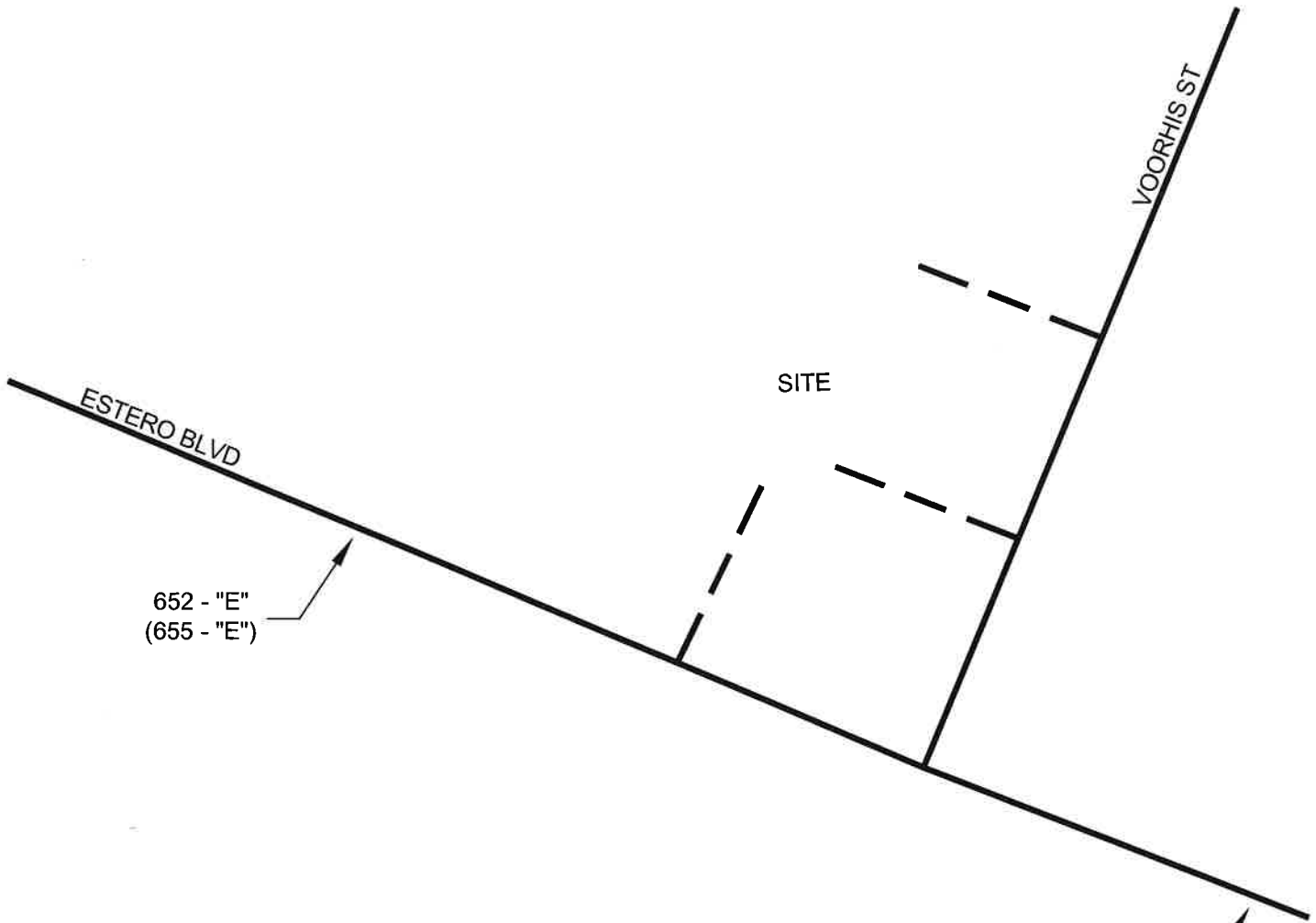
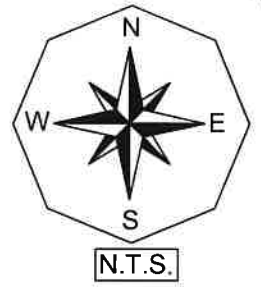
Table 2A in the Appendix of the report indicates the methodology utilized to obtain the year 2025 build-out traffic volumes as well as the growth rate utilized for each roadway segment. The base year traffic volumes for Estero Boulevard were obtained from the latest *Lee County Public Facilities Level of Service and Concurrency Report*. It should be noted that the base traffic volumes utilized in this analysis were collected prior to Hurricane Ian. It will be a number of years before this level of traffic volume is attained again due to the loss of residential and hotel units on the island due to hurricane.

Figure 3 indicates the year 2025 peak hour – peak direction traffic volumes and Level of Service for the various roadway links within the study area. Noted on Figure 3 is the peak hour – peak direction volume and Level of Service of each link should no development occur on the subject site and the peak hour – peak direction volume and Level of Service for the weekday P.M. peak hour with the proposed redevelopment traffic added to the roadways. This figure is derived from Table 2A contained in the Appendix.

VII. PROJECTED LEVEL OF SERVICE

Adverse impacts are defined as a degradation of the Level of Service beyond the adopted Level of Service Thresholds for those links as indicated in Table 1A. In comparing the links' functional classification and calculated 2025 traffic volumes to the Service Volume Tables, it was determined that Estero Boulevard adjacent to the site is projected to operate at an acceptable Level of Service "E" in 2025 both with and without the proposed redevelopment traffic added to this roadway. Therefore, roadway capacity improvements will not be warranted as a result of the additional traffic to be generated by the proposed 7-Eleven redevelopment on the subject site.

It should also be noted that Estero Boulevard is designated as a "Constrained Roadway" by the Lee County Board of County Commissioners pursuant to the Lee Plan Objective 37.2 and Table 2(a). Per Lee Plan Policy 37.2.1, a reduced peak hour Level of Service will be accepted on constrained roadways. Additionally, FDOT has been recently released the construction project to begin improvements to San Carlos Boulevard from Buttonwood Drive to Estero Boulevard that will create two travel lanes southbound over Matanzas Pass Bridge as well as redesigning the intersection of San Carlos Boulevard and Estero Boulevard with a new signal. Based on discussion with FDOT, the construction for this improvement is anticipated to begin in April of 2024 and be completed by the end of year 2025.



LEGEND

XXX - "C" 2025 PEAK SEASON, PEAK HOUR,
PEAK DIRECTION BACKGROUND
TRAFFIC AND LEVEL OF SERVICE
DESIGNATION

(XXX -"C") 2025 PEAK SEASON, PEAK HOUR,
PEAK DIRECTION BACKGROUND
PLUS PROJECT TRAFFIC PEAK
HOUR PROJECT TRIPS AND LEVEL
OF SERVICE DESIGNATION

VIII. TURN LANE ANALYSIS

A turn lane analysis was completed at the proposed site access drives on Estero Boulevard and Voorhis Street based upon the Lee County Turn Lane Policy (Lee County Administrative Code 11-4). The Lee County Administrative Code 11-4 is attached to the Appendix of this report for reference. Based upon the results of the turn lane analysis, no turn lanes will be warranted at this intersection as a result of the proposed 7-Eleven redevelopment of the subject site. A summary of the turn lane criteria is outlined below.

Right Turn Lane On Arterial Street – Estero Boulevard

Posted speed limit of the arterial street is equal to or greater than thirty-five (35) mph – Criteria Met – No, the posted speed limit on Estero Boulevard is 25 mph.

Number of right turning movements from the street is equal to or greater than thirty (30) during either AM or PM peak hour of the arterial street or peak hour of the development when the arterial street AADT is less than 6,000 vpd, or equal to or greater than twenty (20) vph during either the A.M. or P.M. peak hour of the arterial street or peak hour of the development when the arterial street AADT is equal to or greater than 6,000 vpd– Criteria Met – Yes.

Available Sight Distance of a right turning vehicle to be seen by through traffic traveling in the same direction is less than the values shown in Table A-1 for the design speed of the arterial street – Criteria Met – No.

Arterial Street has been designated as a controlled access facility by the BOCC– Criteria Met – No.

Traffic Control of the intersecting street or access point connection is a signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year– Criteria Met – No.

It is determined by the Lee County Department of Transportation that a turn lane is required for the health, safety, and welfare of the road users – Criteria Met – No.

At least two or more criteria need to be met to warrant a right turn lane. Since two or more criteria are not met, a separate westbound right turn lane is **NOT** warranted at proposed site access drive on Estero Boulevard.

Arriving project traffic from the west of the site will continue to utilize the existing Two-Way-Left-Turn-Lane (TWLTL) on Estero Boulevard to access the site.

Left Turn Lane On Local Street – Voorhis Street

Posted speed limit on the local street is equal to or greater than thirty (30) mph and the peak hour left turning movement is sixty (60) or more – Criteria Met – No. See Figure 2.

Number of Left Turning Movements:

On multi-lane facilities the number of left turning vehicles exceeds one hundred (100) during the peak hour of the local street.

On two-lane two-way facilities the number of left turning vehicles from the local street exceeds (60) sixty during either the peak hour of the local street and the opposing through and right turn traffic volume exceeds five hundred (500) vehicles during either the A.M. or P.M. peak hour of the local street. – Criteria Met – No. See Figure 2.

Available Sight Distance for left turning approaching traffic: or for approaching traffic moving in either direction to observe the left turning vehicle is less than the value shown in Table A-1 for the posted speed limit of the local street– Criteria Met – No.

Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants in the next five years– Criteria Met – No.

It is determined by the Lee County Department of Transportation that a turn lane is required for the health, safety, and welfare of the road users – Criteria Met – No.

At least two or more criteria need to be met to warrant a left turn lane. Since two or more criteria are not met, separate northbound left turn lanes will **NOT** be warranted at proposed site access drives on Voorhis Street.

Right Turn Lane On Local Street – Voorhis Street

Posted speed limit on the local street is equal to or greater than thirty (30) mph –
Criteria Met – **No, the posted speed limit is 20 mph.**

Number of right turning movements from the local street is equal to or greater than sixty (60) during either A.M. or P.M. peak hour of the local street – Criteria Met – **No. See Figure 2.**

Available Sight Distance for a right turning vehicle to be seen by through traffic traveling in the same direction is less than the value shown in Table A-1 for the design speed of the local street – Criteria Met – **No.**

Traffic Control of the intersecting street or access point connection is a signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year– Criteria Met – **No.**

It is determined by the Lee County Department of Transportation that a turn lane is required for the health, safety, and welfare of the road users – Criteria Met – **No.**

At least two or more criteria need to be met to warrant a right turn lane. Since two or more criteria are not met, separate southbound right turn lanes will **NOT** be warranted at proposed site access drives on Voorhis Street.

VII. CONCLUSION

The proposed Development Order application is for the redevelopment of the existing 7-Eleven gas station located at 3051 Estero Boulevard in the Town of Fort Myers Beach of Lee County, Florida. The results of the Level of Service Analysis conducted as part of this report indicate that Estero Boulevard adjacent to the site is projected to operate at an acceptable Level of Service “E” in 2025 both with and without the proposed redevelopment traffic added to this roadway. Therefore, roadway capacity improvements will not be warranted as a result of the additional traffic to be generated by the proposed 7-Eleven redevelopment on the subject site.

It should also be noted that Estero Boulevard is designated as a “Constrained Roadway” by the Lee County Board of County Commissioners pursuant to the Lee Plan Objective 37.2 and Table 2(a). Per Lee Plan Policy 37.2.1, a reduced peak hour Level of Service will be accepted on constrained roadways. Additionally, FDOT has been recently released the construction project to begin improvements to San Carlos Boulevard from Buttonwood Drive to Estero Boulevard that will create two travel lanes southbound over Matanzas Pass Bridge and redesigning the intersection of San Carlos Boulevard and Estero Boulevard with a new signal. Based on discussion with FDOT, the construction for this improvement is anticipated to begin in April of 2024 and be completed by the end of year 2025.

No turn lanes will be warranted at the proposed site access drives on Estero Boulevard and Voorhis Street pursuant to the criteria that is outlined in the Lee County Turn Lane Policy (Administrative Code 11-4). Arriving project traffic from the west of the site will continue to utilize the existing Two-Way-Left-Turn-Lane (TWLTL) on Estero Boulevard to access the site.

APPENDIX

TABLES 1A & 2A

TABLE 1A
PROJECT TRAFFIC VS. 10% LOS C LINK VOLUMES
7-ELEVEN @ 3051 ESTERO BLVD

AM PEAK HOUR PROJECT TRAFFIC =		31	VPH	IN=	15	OUT=	16			
PM PEAK HOUR PROJECT TRAFFIC =		19	VPH	IN=	7	OUT=	12			
<u>ROADWAY</u>	<u>SEGMENT</u>	<u>ROADWAY CLASS</u>	<u>LOS A VOLUME</u>	<u>LOS B VOLUME</u>	<u>LOS C VOLUME</u>	<u>LOS D VOLUME</u>	<u>LOS E VOLUME</u>	<u>% PROJECT TRAFFIC</u>	<u>PROJECT TRIPS</u>	<u>PROJ/ LOS C</u>
Estero Blvd	W. of Site	2LN	500	568	593	632	671	20%	3	0.5%
	E. of Site	2LN	500	568	593	632	671	65%	10	1.8%

* Level of Service Thresholds taken from Lee County Link Specific Service Volumes for peak hour, peak direction, dated June 2016

NOTE: Remaining 15% of project traffic was assigned to/from the north on Voorhis Street.

TABLE 2A
LEE COUNTY TRAFFIC COUNTS AND CALCULATIONS
7-ELEVEN @ 3051 ESTERO BLVD

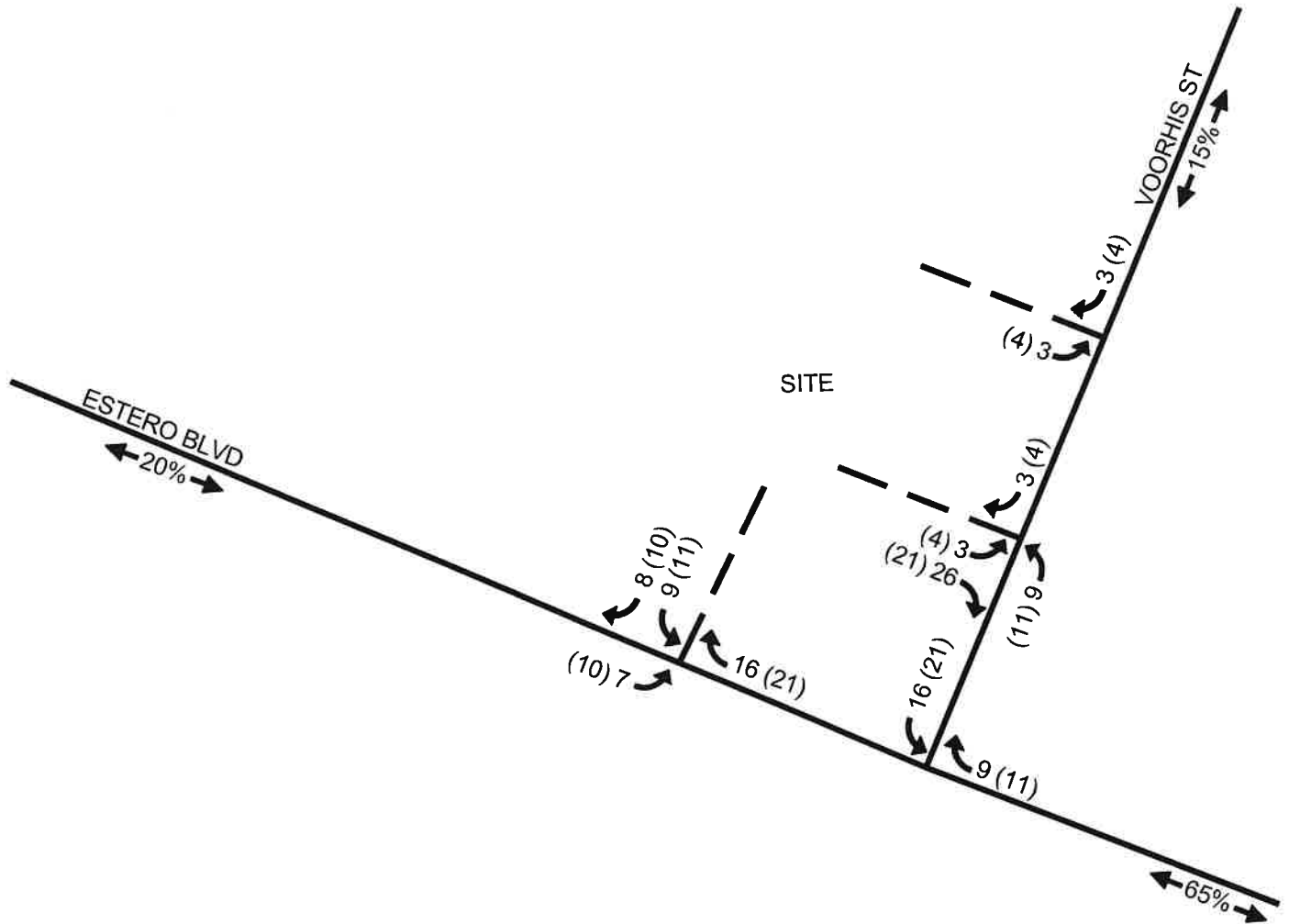
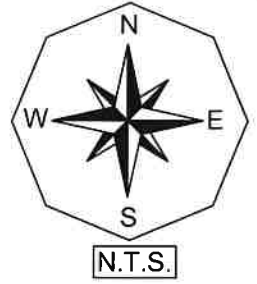
AM PEAK HOUR PROJECT TRAFFIC = 31 VPH		IN=	15	OUT=	16										
PM PEAK HOUR PROJECT TRAFFIC = 19 VPH		IN=	7	OUT=	12										
ROADWAY	SEGMENT	PCS	BASE YR		YRS OF GROWTH	ANNUAL RATE	2021		2025		% PROJ	2025		2025	
			ADT	ADT			PK HR	PK SEASON	PK HR	PK SEASON		BCKGRND	+ NEW	BCKGRND	+ NEW
Estero Blvd	W. of Site	126044	14,205	12,500	14	2.00%	602	652	602	652	20%	655	655	654	654
	E. of Site	126044	14,205	12,500	14	2.00%	602	652	602	652	65%	662	662	659	659

¹ 2021 Peak Hour volumes were obtained from the Lee County 2022 Public Facilities Level of Service and Concurrency Report

NOTE: Remaining 15% of project traffic was assigned to/from the north on Voorhis Street.

100TH HIGHEST HOUR LEVEL OF SERVICE									
		2025		2025		2025		2025	
		BCKGRND	BCKGRND	BCKGRND	BCKGRND	BCKGRND	BCKGRND	BCKGRND	BCKGRND
		TRAFFIC		+ NEW AM		+ NEW PM		+ NEW PM	
		LOS		PROJ LOS		PROJ LOS		PROJ LOS	
		E		E		E		E	
		E		E		E		E	
		W. of Site		W. of Site		W. of Site		W. of Site	
		E. of Site		E. of Site		E. of Site		E. of Site	

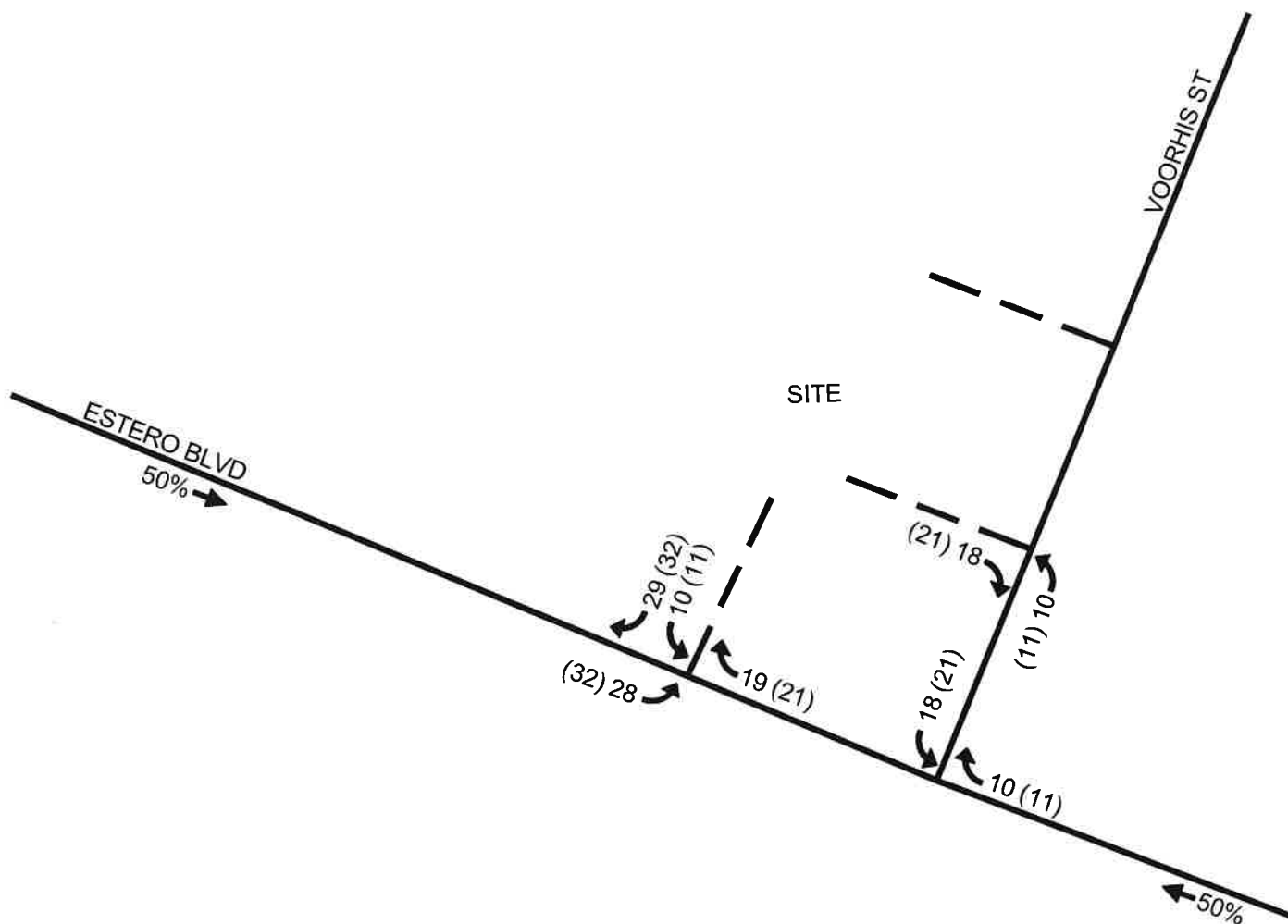
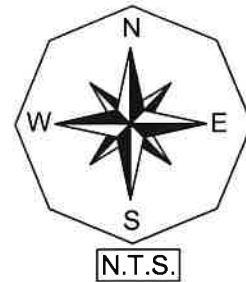
SUPPLEMENTAL FIGURES A-1 & A-2



LEGEND

- ← 000 WEEKDAY AM PEAK HOUR VOLUMES
- ← (000) WEEKDAY PM PEAK HOUR VOLUMES
- ← 20% → PERCENT TRIP DISTRIBUTION

F2308.16



LEGEND

- ← 000 WEEKDAY AM PEAK HOUR VOLUMES
- ← (000) WEEKDAY PM PEAK HOUR VOLUMES
- ← 20% PEAK HOUR PASS-BY TRIP DISTRIBUTION

**LEE COUNTY PUBLIC FACILITIES
LEVEL OF SERVICE AND
CONCURRENCY REPORT**

Table 21 b): Link-Level Service Volumes and LOS Table

Table 21 b) 2 of 7

LEE COUNTY ROAD LINK VOLUMES (County- and State-Maintained Roadways)														
Link No.	NAME	ROADWAY LINK		F. Class	ROAD TYPE	PERFORMANCE STANDARD		2021 100TH HIGHEST HOUR			FUTURE FORECAST (2026)			Notes
		FROM	TO			LOS	DIRECTIONAL CAPACITY	LOS	VOL	V/C	LOS	VOL	V/C	
04800	CEMETERY RD	BUCKINGHAM RD	HIGGINS AVE	Maj. Col	2LN	E	860	C	308	0.36	C	323	0.38	Port Authority maintained Estero maintains to east *
04900	CHAMBERLIN PKWY	AIRPORT ENT	DANIELS PKWY	Maj. Col	4LN	E	1,790	C	105	0.06	C	150	0.08	
05000	COCONUT RD	WEST END	VIA VENETTO BLVD	Maj. Col	2LN	E	860	C	268	0.31	C	420	0.49	
05100	COLLEGE PKWY	MCGREGOR BLVD	WINKLER RD	P. Art	6LD	E	2,980	D	2,292	0.77	D	2,409	0.81	
05200	COLLEGE PKWY	WINKLER RD	WHISKEY CREEK DR	P. Art	6LD	E	2,980	D	2,059	0.69	D	2,164	0.73	
05300	COLLEGE PKWY	WHISKEY CREEK DR	SUMMERLIN RD	P. Art	6LD	E	2,980	D	2,059	0.69	D	2,164	0.73	*
05400	COLLEGE PKWY	SUMMERLIN RD	US 41	P. Art	6LD	E	2,980	D	1,898	0.64	D	1,995	0.67	
05500	COLONIAL BLVD	MCGREGOR BLVD	SUMMERLIN RD	P. Art	6LD	E	2,840	F	3,049	1.07	F	3,204	1.13	
05600	COLONIAL BLVD	SUMMERLIN RD	US 41	P. Art	6LD	E	2,840	D	2,650	0.93	D	2,785	0.98	
06200	COLONIAL BLVD	DYNASTY DR	SR 82	P. Art	6LD	D	3,040	B	2,070	0.68	C	2,175	0.72	
06300	COLUMBUS BLVD	SR 82	MILWAUKEE BLVD	Maj. Col	2LN	E	860	C	100	0.12	C	105	0.12	old count
06400	CONSTITUTION BLVD	US 41	CONSTITUTION CIR	Maj. Col	2LN	E	860	C	217	0.25	C	245	0.28	old count projection(2010)
06500	CORBETT RD	SR 78 (PINE ISLAND RD)	LITTLETON RD	Maj. Col	2LN	E	860	C	22	0.03	C	226	0.26	old count, added VA clinic(2009)
06600	CORKSCREW RD	US 41	THREE OAKS PKWY	P. Art	4LD	E	1,900	C	1,047	0.55	C	1,312	0.69	Galleria at Corkscrew Estero Crossing
06700	CORKSCREW RD	THREE OAKS PKWY	W OF I-75	P. Art	4LD	E	1,900	F	2,129	1.12	F	2,368	1.25	
06800	CORKSCREW RD	E OF I-75	BEN HILL GRIFFIN BLVD	P. Art	4LD	E	1,900	C	1,069	0.56	C	1,281	0.67	EEPCO Study, The Place old count projection(2010)
06900	CORKSCREW RD	BEN HILL GRIFFIN BLVD	ALICO RD	P. Art	4LD	E	1,960	C	1,186	0.61	C	1,398	0.71	
07000	CORKSCREW RD	ALICO RD	COUNTY LINE	P. Art	2LN	E	1,140	C	464	0.41	F	1,244	1.09	
07100	COUNTRY LAKES BLVD	LUCKETT RD	TICE ST	Maj. Col	2LN	E	860	C	143	0.17	C	293	0.34	
07200	CRYSTAL DR	US 41	METRO PKWY	Maj. Col	2LN	E	860	C	360	0.42	C	379	0.44	
07300	CRYSTAL DR	METRO PKWY	PLANTATION RD	Maj. Col	2LN	E	860	C	242	0.28	C	254	0.30	Constrained Constrained Constrained
07400	CYPRESS LAKE DR	MCGREGOR BLVD	SOUTH POINT BLVD	P. Art	4LD	E	1,940	D	1,129	0.58	D	1,186	0.61	
07500	CYPRESS LAKE DR	SOUTH POINT BLVD	WINKLER RD	P. Art	4LD	E	1,940	D	1,419	0.73	D	1,491	0.77	
07600	CYPRESS LAKE DR	WINKLER RD	SUMMERLIN RD	P. Art	4LD	E	1,940	D	1,419	0.73	D	1,491	0.77	
07700	CYPRESS LAKE DR	SUMMERLIN RD	US 41	P. Art	6LD	E	2,940	D	2,085	0.71	D	2,191	0.75	
07800	DANIELS PKWY	US 41	METRO PKWY	Controlled xs	6LD	E	2,680	D	2,288	0.85	D	2,405	0.90	Constrained Constrained Constrained
07900	DANIELS PKWY	METRO PKWY	SIX MILE PKWY	Controlled xs	6LD	E	2,680	D	2,109	0.79	E	2,520	0.94	
08000	DANIELS PKWY	SIX MILE PKWY	PALOMINO LN	Controlled xs	6LD	E	3,040	E	2,985	0.98	F	3,256	1.07	
08100	DANIELS PKWY	PALOMINO LN	I-75	Controlled xs	6LD	E	3,040	E	2,985	0.98	F	3,137	1.03	
08200	DANIELS PKWY	I-75	TREELINE AVE	Controlled xs	6LD	E	3,260	B	2,996	0.92	B	3,149	0.97	
08300	DANIELS PKWY	TREELINE AVE	CHAMBERLIN PKWY	Controlled xs	6LD	E	3,260	B	2,996	0.92	B	3,149	0.97	SKY Walk *
08400	DANIELS PKWY	CHAMBERLIN PKWY	GATEWAY BLVD	Controlled xs	6LD	E	3,260	B	2,765	0.85	B	2,906	0.89	
08500	DANIELS PKWY	GATEWAY BLVD	SR 82	Controlled xs	4LD	E	2,160	F	2,163	1.00	F	2,307	1.07	
08600	DANLEY DR	US 41	METRO PKWY	Maj. Col	2LN	E	860	C	255	0.30	C	286	0.33	
08700	DAVIS RD	MCGREGOR BLVD	IONA RD	Maj. Col	2LN	E	860	C	15	0.02	C	29	0.03	old count projection(2010)
08800	DEL PRADO BLVD	CAPE CORAL PKWY	SE 46TH ST	P. Art	6LD	E	2,660	C	1,404	0.53	C	1,586	0.60	old count projection(2009)
08900	DEL PRADO BLVD	SE 46TH ST	CORONADO PKWY	P. Art	6LD	E	2,660	C	1,404	0.53	C	1,586	0.60	old count projection(2009)
09000	DEL PRADO BLVD	CORONADO PKWY	CORNWALLIS PKWY	P. Art	6LD	E	2,660	D	1,869	0.70	D	1,964	0.74	*
09100	DEL PRADO BLVD	CORNWALLIS PKWY	CORAL POINT DR	P. Art	6LD	E	2,660	D	2,565	0.96	F	2,686	1.01	
09200	DEL PRADO BLVD	CORAL POINT DR	HANCOCK B. PKWY	P. Art	6LD	E	2,800	D	1,997	0.71	D	2,098	0.75	
09300	DEL PRADO BLVD	HANCOCK B. PKWY	SR 78	P. Art	6LD	E	2,800	C	1,642	0.59	C	1,725	0.62	
09400	DEL PRADO BLVD	US 41	SLATER RD	M. Art	2LN	E	860	C	489	0.57	D	742	0.86	
09700	EAST 21ST ST	JOEL BLVD	GRANT AVE	Min. Col	2LN	E	860	C	31	0.04	C	33	0.04	Crane Landing *
09800	ESTERO BLVD	BIG CARLOS PASS BRIDGE	PESCADORA AVE	M. Art	2LN	E	726	A	356	0.49	A	374	0.52	Constrained*
09900	ESTERO BLVD	PESCADORA AVE	VOORHIS ST	M. Art	2LN	E	726	B	602	0.83	C	633	0.87	Constrained*
10000	ESTERO BLVD	VOORHIS ST	TROPICAL SHORES WAY	M. Art	2LN	E	726	B	602	0.83	C	633	0.87	Constrained*
10100	ESTERO BLVD	TROPICAL SHORES WAY	CENTER ST	M. Art	2LN	E	671	F	716	1.07	F	779	1.16	Constrained, old count(2010)
00007	ESTERO PKWY	US 41	THREE OAKS PKWY	P. Art	4LD	E	2,000	B	861	0.43	B	1,154	0.58	Not County Maintd

County-Maintained Collector Roadway - Unincorporated Lee County

State-Maintained Arterial Roadway - Unincorporated Lee County

County-Maintained Collector Roadway - Incorporated Lee County

County Maintained Controlled Access Arterial Facility

County-Maintained Arterial Roadway - Unincorporated Lee County

County Maintained Expressway

County-Maintained Arterial Roadway - Incorporated Lee County

**LEE COUNTY LINK SPECIFIC
SERVICE VOLUMES TABLE**

LINK-SPECIFIC SERVICE VOLUMES ON ARTERIALS IN LEE COUNTY (2015 DATA)

ROAD SEGMENT	FROM	TO	TRAFFIC DISTRIC	LENGTH (MILE)	ROAD TYPE	SERVICE VOLUMES (PEAK HOUR PEAK DIRECTION)					SERVICE VOLUMES (PEAK HOUR—BOTH DIRECTIONS)				
						A	B	C	D	E	A	B	C	D	E
COLONIAL BLVD	SIX MILE PKWY	I-75	1	0.5	6LD	0	2,630	3,100	3,100	3,100	0	4,390	5,180	5,180	5,180
	SR 82	SR 82	1	2.4	6LD	0	2,280	3,040	3,040	3,040	0	3,800	5,070	5,070	5,070
CORKSCREW RD	US 41	SANDY LN	4	0.5	4LD	0	390	1,900	1,900	1,900	0	760	3,670	3,670	3,670
	SANDY LN	THREE OAKS PKWY	4	0.7	4LD	0	390	1,900	1,900	1,900	0	760	3,670	3,670	3,670
ESTERO BLVD	THREE OAKS PKWY	I-75	4	0.8	4LD	0	390	1,900	1,900	1,900	0	760	3,670	3,670	3,670
	BEN HILL GRIFFIN PKWY	BEN HILL GRIFFIN PKWY	3	0.5	4LD	0	390	1,900	1,900	1,900	0	760	3,670	3,670	3,670
FOWLER ST	WILDCAT RUN DR	WILDCAT RUN DR	3	1.7	2LD	0	820	1,200	1,200	1,200	0	1,580	2,310	2,310	2,310
	ALICO RD	ALICO RD	3	2.6	2LN	90	310	570	790	1,140	180	600	1,100	1,520	2,200
GLADIOLUS DR	COUNTY LINE	COUNTY LINE	3	10.4	2LN	90	310	570	790	1,140	180	600	1,100	1,520	2,200
	McGREGOR BLVD	SOUTH POINT BLVD	4	0.4	4LD	0	0	890	1,880	1,940	0	0	1,590	3,360	3,480
DANIELS PKWY	SOUTH POINT BLVD	WINKLER RD	4	0.6	4LD	0	0	890	1,880	1,940	0	0	1,590	3,360	3,480
	WINKLER RD	SUMMERLIN RD	4	0.7	4LD	0	0	890	1,880	1,940	0	0	1,590	3,360	3,480
DEL PRADO BLVD	SUMMERLIN RD	US 41	4	0.9	6LD	0	0	1,360	2,890	2,940	0	0	2,430	5,170	5,240
	BIG PINE WAY	BIG PINE WAY	4	0.5	6LD	0	0	590	2,480	2,680	0	0	1,100	4,600	4,980
ESTERO PKWY	METRO PKWY	METRO PKWY	4	0.6	6LD	0	0	590	2,480	2,680	0	0	1,100	4,600	4,980
	SIX MILE PKWY	SIX MILE PKWY	4	0.8	6LD	0	0	590	2,480	2,680	0	0	1,100	4,600	4,980
FOWLER ST	PALOMINO DR	PALOMINO DR	4	2.2	6LD	210	2,830	3,040	3,040	3,040	390	5,250	5,650	5,650	5,650
	I-75	I-75	4	0.6	6LD	210	2,830	3,040	3,040	3,040	390	5,250	5,650	5,650	5,650
GLADIOLUS DR	TREELINE AVE	TREELINE AVE	3	0.5	6LD	2,510	3,260	3,260	3,260	3,260	4,190	5,420	5,420	5,420	5,420
	CHAMBERLIN PKWY	CHAMBERLIN PKWY	3	0.8	6LD	2,510	3,260	3,260	3,260	3,260	4,190	5,420	5,420	5,420	5,420
HICKORY BLVD	SE 46TH ST	SE 46TH ST	5	0.7	6LD	0	0	1,660	2,660	2,660	0	0	3,140	5,000	5,000
	CORONADO PKWY	CORONADO PKWY	5	1.3	6LD	0	0	1,660	2,660	2,660	0	0	3,140	5,000	5,000
MID ISLAND DR	CORNWALLIS PKWY	CORNWALLIS PKWY	5	0.8	6LD	0	0	1,660	2,660	2,660	0	0	3,140	5,000	5,000
	VETERANS PKWY	VETERANS PKWY	5	3.0	6LD	0	0	1,640	2,800	2,800	0	0	3,160	5,390	5,390
N AIRPORT RD	HANCOCK B. PKWY	HANCOCK B. PKWY	5	0.7	6LD	0	0	2,770	2,800	2,800	0	0	5,330	5,370	5,370
	NE 6TH ST	NE 6TH ST	5	0.4	6LD	0	0	2,770	2,800	2,800	0	0	5,330	5,370	5,370
PINE RIDGE RD	AVENIDA PESCADORA	AVENIDA PESCADORA	4	2.9	2LN	571	616	644	685	726	1,120	1,208	1,264	1,344	1,424
	MID ISLAND DR	MID ISLAND DR	4	1.2	2LN	571	616	644	685	726	1,120	1,208	1,264	1,344	1,424
SANDY LN	WILDCAT RUN DR	WILDCAT RUN DR	4	1.8	2LD	500	568	593	632	671	980	1,113	1,162	1,239	1,316
	BEN HILL GRIFFIN PKWY	BEN HILL GRIFFIN PKWY	4	2.6	4LD	0	2,000	2,000	2,000	2,000	0	3,850	3,850	3,850	3,850
THREE OAKS PKWY	N AIRPORT RD	N AIRPORT RD	1	1.0	6LD	0	0	0	2,040	2,300	0	0	0	3,710	4,180
	COLONIAL BLVD	COLONIAL BLVD	1	0.3	6LD	0	0	0	2,040	2,300	0	0	0	3,710	4,180
WINKLER RD	McGREGOR BLVD	PINE RIDGE RD	4	0.5	4LD	0	190	1,840	1,840	1,840	0	360	3,430	3,430	3,430
	PINE RIDGE RD	BASS RD	4	1.6	4LD	0	190	1,840	1,840	1,840	0	360	3,430	3,430	3,430
WINKLER RD	BASS RD	WINKLER RD	4	0.8	6LD	0	290	2,780	2,780	2,780	0	540	5,160	5,160	5,160
	WINKLER RD	WINKLER RD	4	0.5	6LD	0	2,060	2,780	2,780	2,780	0	3,890	5,240	5,240	5,240
WINKLER RD	SUMMERLIN RD	SUMMERLIN RD	4	1.5	6LD	0	2,060	2,780	2,780	2,780	0	3,890	5,240	5,240	5,240
	US 41	US 41	4	1.5	6LD	0	2,060	2,780	2,780	2,780	0	3,890	5,240	5,240	5,240

**TRAFFIC DATA FROM FDOT'S
FLORIDA TRAFFIC ONLINE**

FLORIDA DEPARTMENT OF TRANSPORTATION
TRANSPORTATION STATISTICS OFFICE
2022 HISTORICAL AADT REPORT

COUNTY: 12 - LEE

SITE: 6044 - ESTERO BLVD, 100' N OF DONORA BLVD, PTMS 2044, LCPR 44

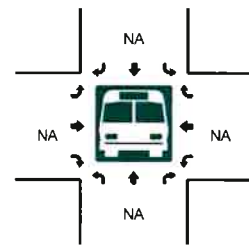
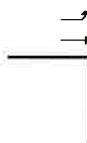
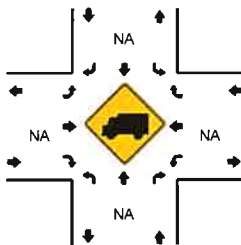
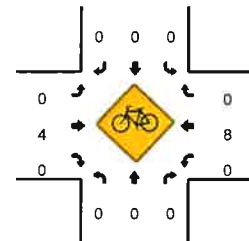
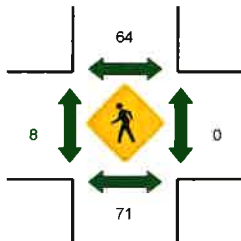
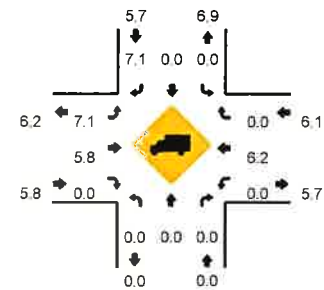
YEAR	AADT	DIRECTION 1	DIRECTION 2	*K FACTOR	D FACTOR	T FACTOR
2022	12500 X	0	0	9.00	53.90	8.30
2021	12500 X	0	0	9.00	53.50	4.10
2020	12500 X	0	0	9.00	53.40	5.70
2019	13000 T	0	0	9.00	53.80	3.10
2018	12500 S	0	0	9.00	53.30	2.60
2017	12400 F	0	0	9.00	52.90	3.60
2016	12476 C	N	6285 S	9.00	52.90	2.80
2015	12751 C	N	6358 S	9.00	52.90	2.80
2014	13531 C	N	6744 S	9.00	52.90	5.20
2013	13496 C	N	6702 S	9.00	52.70	6.50
2012	13657 C	N	6707 S	9.00	53.20	3.00
2011	13753 C	N	6771 S	9.00	52.90	3.50
2010	13554 C	N	6682 S	9.77	53.36	2.80
2009	14113 C	N	7088 S	9.55	52.60	3.10
2008	14205 C	N	7155 S	9.56	52.72	3.60

AADT FLAGS: C = COMPUTED; E = MANUAL ESTIMATE; F = FIRST YEAR ESTIMATE
S = SECOND YEAR ESTIMATE; T = THIRD YEAR ESTIMATE; R = FOURTH YEAR ESTIMATE
V = FIFTH YEAR ESTIMATE; 6 = SIXTH YEAR ESTIMATE; X = UNKNOWN
*K FACTOR: STARTING WITH YEAR 2011 IS STANDARDK, PRIOR YEARS ARE K30 VALUES

**TRAFFIC DATA FROM
FDOT'S SR 865 TRAFFIC REPORT**

Method for determining peak hour: Total Entering Volume

QC JOB #: 13203501
DATE: Thu, Apr 23 2015

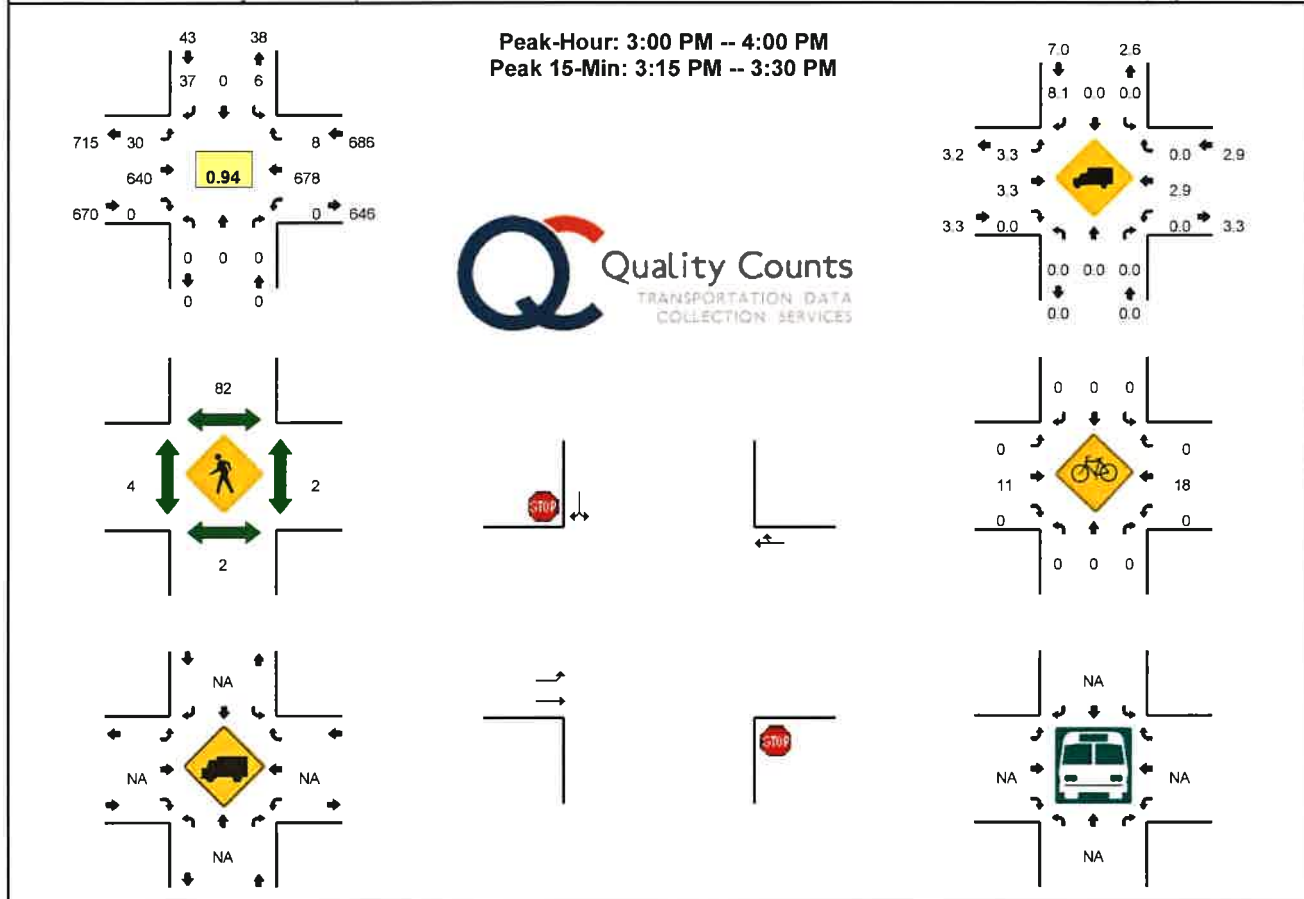
Comments:

Type of peak hour being reported: Intersection Peak

Method for determining peak hour: Total Entering Volume

LOCATION: Palermo Cir -- Estero Blvd
CITY/STATE: Fort Myers Beach, FL

QC JOB #: 13203502
DATE: Thu, Apr 23 2015



15-Min Count Period Beginning At	Palermo Cir (Northbound)				Palermo Cir (Southbound)				Estero Blvd (Eastbound)				Estero Blvd (Westbound)				Total	Hourly Totals
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
3:00 PM	0	0	0	0	1	0	14	0	7	179	0	0	0	161	1	0	363	
3:15 PM	0	0	0	0	0	0	8	0	8	174	0	0	0	178	4	0	372	
3:30 PM	0	0	0	0	4	0	6	0	6	129	0	0	0	160	1	0	306	
3:45 PM	0	0	0	0	1	0	9	0	9	158	0	0	0	179	2	0	358	1399
4:00 PM	0	0	0	0	2	0	2	0	9	140	0	0	0	176	2	0	331	1367
4:15 PM	0	0	0	0	2	0	2	0	9	156	0	0	0	179	2	0	350	1345
4:30 PM	0	0	0	0	1	0	5	0	4	175	0	0	0	156	0	0	341	1380
4:45 PM	0	0	0	0	3	0	5	0	6	142	0	0	0	177	1	0	334	1356
Peak 15-Min Flowrates	Northbound				Southbound				Eastbound				Westbound				Total	
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
All Vehicles	0	0	0	0	0	0	32	0	32	696	0	0	0	712	16	0	1488	
Heavy Trucks	0	0	0	0	0	0	0	0	0	28	0	0	0	16	0	0	44	
Pedestrians	0	0	0	0	48	0	0	0	0	8	0	0	0	0	0	0	56	
Bicycles	0	0	0	0	0	0	0	0	0	2	0	0	0	3	0	0	5	
Railroad																		
Stopped Buses																		

Comments:

Report generated on 5/25/2015 5:29 PM

SOURCE: Quality Counts, LLC (<http://www.qualitycounts.net>) 1-877-580-2212

LEE COUNTY TURN LANE POLICY
ADMINISTRATIVE CODE 11-4

**Administrative Code
Board of County Commissioners**

CATEGORY: Transportation and Traffic Management

CODE NUMBER: AC-11-4

TITLE:
TURN LANE POLICY

ADOPTED: 10/19/88

AMENDED: 10/16/91 3/24/98, 08/17/21

ORIGINATING DEPARTMENT:
TRANSPORTATION

PURPOSE/SCOPE:

GENERAL

I. SCOPE

Deceleration, left turn, and right turn lanes are desirable for the safe execution of speed change maneuvers and for storage and protection of left and right turning vehicles. These additional lanes for exit or entrance maneuvers shall be provided in accordance with County Design Standards herein. The pavement width and cross slopes of such lanes shall meet minimum requirements; however, special designs may be allowed when deemed necessary by the Director of the Department of Transportation for County maintained facilities and the Manager of the Department of Community Development's Development Services Division for privately-maintained facilities. Shoulders and recovery areas should be provided in accordance with the same requirements for other travel lanes; wherever possible.

It should be realized that deceleration, left turn, and right turn lanes constitute an integral part of the geometric design of streets and highways and shall be included in the design for all new and replacement construction projects. Deceleration, left turn, and right turn lanes may need to be installed at an existing intersection or access point to improve the existing or outdated design, if and when a traffic analysis shows that the travel time or safety is being degraded by the proposed project traffic, or the turning movements at the intersection are being created by the proposed project's traffic. This Policy addresses the warrants and design features for both cases.

II. POLICY AND PROCEDURE

Deceleration, left turn, and right turn lanes shall be provided at all intersections and/or access points on county-maintained and privately-maintained facilities as required by this policy. Deceleration, left turn, and right turn lane requirements shall not apply to a single family residence, a duplex residence, or two (2) family residence. When an existing development increases trip generation by expanding facilities or by change in use, a one-time deviation may be granted whereby only the increased trip generation is considered in determining if the warrants for requiring deceleration, left and right turn lanes are satisfied providing such deviation does not create a new or increased existing hazard which is detrimental to the health, safety and welfare of the traveling public.

This policy shall not be used to deny access to county maintained facilities for property which otherwise has the right of access; and for which it is not possible to provide deceleration, left and right turn lanes without acquiring additional Right-of-way (ROW) beyond the limits of the subject property. Nothing in this policy shall be construed to place an obligation upon the County to permit left turn lanes into or out of any development via either any existing or proposed street or access point driveway from any street or highway facility where the Director of the Department of Transportation or the Manager of the Division of Development Services (hereinafter referred to as the "Directors") has determined it is not in the best interests of the health, safety and general welfare of the traveling public to allow such left turning movement.

III. DEFINITIONS

1. Deceleration Lane(s)

The primary function of a deceleration lane is to provide a safe travel path and sufficient distance for exiting vehicles to decelerate from the operating speed on the through lanes of a roadway prior to exiting from the facility.

2. Turn Lane(s)

a. Left Turn

The primary function of a left turn lane is to provide a protected area separated from the flow of through traffic in the same direction where left turning vehicles can slow to a stop and wait until a suitable gap occurs or is provided in the opposing flow of traffic to allow the turning maneuver to be safely completed. A secondary function is to eliminate the delay and congestion that would affect the through traffic movement in the same direction while the left turning vehicles slowed down and waited for a safe and adequate gap in the opposing flow of traffic to complete the turning maneuver.

b. Right Turn

The primary purpose of a right turn storage lane is to provide a protected area separated from the flow of through traffic in the same direction where right turning vehicles can slow to turning speed or stop and wait until the turning maneuver can be safely completed. A secondary purpose is to eliminate the delay and congestion that would occur for through traffic moving in the same direction while turning vehicles slowed down and completed the right turn movement.

3. Design Speed

The design speed is the speed noted on the roadway construction plans, or if plans are not available, it is the posted speed limit plus five miles per hour.

4. Two-way peak season volume

Two-way peak season peak hour volumes to be derived from the AADT estimates in the most recent Lee County Traffic Count Report or if County counts are not available, from developer's counts adjusted using the peak season and peak hour factors from an appropriate nearby permanent count station or combination of count stations. The volumes should also be adjusted to the appropriate horizon year per the TIS requirements.

5. FDOT Design Manual (FDM)

The latest version of the Florida Department of Transportation Design Manual.

IV. WARRANTS

The need for deceleration and turn lanes are generally determined by the following factors:

1. Street classification of any particular street or road as identified in the adopted County Administrative Code entitled "County Road Functional Classification Map and List".
2. Posted Roadway Speed
3. Number of Turning Movements during the Peak Hour of both the development and the adjacent roadway
4. Opposing and same direction peak hour through volumes.
5. Intersection and/or Stopping Sight Distance
6. Access Control

7. Crash history

Turn lane warrant reviews shall be required by developers at all project site access points, all intersections interior to planned developments open to public traffic, and all access points at the boundaries of planned developments at time of project plan review. Warrant reviews at all intersections interior to planned developments and all access points at the boundaries of planned developments must include all cumulative approved development traffic associated with the planned development.

LEFT TURN DECELERATION AND LEFT TURN LANES

A deceleration and left turn lane will be required when any two (2) or more of the following warrants are satisfied:

A. Arterial Street

1. Posted speed limit of the arterial street is equal to or greater than thirty-five (35) mph.
2. Estimated traffic volume:
 - a. Two-way peak season, peak hour through and right turn volume on the facility for either the peak hour of the roadway or the peak hour of the development is equal to or greater than 1000 vehicles and the left turn volume is greater than or equal to 10 vehicles; or
 - b. Two-way peak season, peak hour through and right turn volume on the facility for either the peak hour of the roadway or the peak hour of the development is between 500 and 1000 vehicles and the left turn volume is greater than or equal to 15 vehicles; or
 - c. When the left turn volume for any hour is greater than 20 trips regardless of through and right turn volumes on the facility.
3. Available Sight Distance for left turning vehicles to observe approaching traffic or for approaching traffic moving in either direction to observe the left turning vehicle is less than the value shown in Table A-1 for the design speed, or posted speed limit plus 5 miles per hour if the design speed is not available, of the arterial street.
4. The arterial street has been designated as a controlled access facility by the BOCC.
5. The arterial street intersection is an arterial street or collector street.
6. Traffic Control of the intersecting street or access point connection is by a traffic signal or is anticipated to meet MUTCD traffic signal warrants in the next five years.
7. Five or more crashes reported at the intersection in a 12-month period during the past three years that could have been mitigated by a left turn lane.
8. It is determined by the Lee County Department of Transportation that a turn lane is required for the health, safety, and welfare of the road users.

Table A-1				
Stopping Sight Distance for Approach to Stops				
Design Speed (mph)	< or = 30	40	50	> or = 60
Required sight distance (ft)	200	310	430	570

B. Collector Street

1. Posted speed limit of the collector street is equal to or greater than thirty-five (35) mph.
2. Number of Left Turning Movements
 - a. On multi-lane collector facilities the number of left turning vehicles from the collector roadway is equal to or greater than twenty (20) during either the A.M. or P.M. peak hour of the collector street or the peak hour of the development.
 - b. On two-lane two way collector streets:

- i. Two-way peak season, peak hour through and right turn volume for either the peak hour of the roadway or the peak hour of the development is equal to or greater than 500 vehicles and the left turn volume is equal to or greater than 20 vehicles for that same hour; or
 - ii. When the left turn volume for any hour is greater than 30 vehicles regardless of through and right turn volume.
- 3. Available Sight Distance for left turning vehicles to observe approaching traffic or for approaching traffic moving in either direction to observe the left turning vehicle is less than the value shown in Table A-I for the design speed, or posted speed limit plus 5 miles per hour if the design speed is not available, of the collector street.
- 4. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants in the next five years.
- 5. The collector street is intersecting an arterial or collector street.
- 6. Five or more crashes reported at the intersection in a 12-month period during the past three years that could have been mitigated by a left turn lane.
- 7. It is determined by the Lee County Department of Transportation that a turn lane is required for the health, safety, and welfare of the road users.

C. Local Streets

- 1. Posted speed limit on the local street is equal to or greater than thirty (30) mph and the peak hour left turning movement is sixty (60) or more.
- 2. Number of Left Turning Movements
 - a. On multi-lane facilities the number of left turning vehicles exceeds one hundred (100) during the peak hour of the local street.
 - b. On two-lane, two way facilities the number of left turning vehicles from the local street exceeds sixty (60) during the peak hour of the local street and the opposing through plus right turn traffic volume exceeds five hundred (500) vehicles during either the A.M. or P.M. peak hour of the local street.
- 3. Available Sight Distance for left turning approaching traffic or for approaching traffic moving in either direction to observe the left turning vehicle is less than the value shown in Table A-I for the posted speed limit of the local street.
- 4. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants in the next five years.
- 5. It is determined by the Lee County Department of Transportation that a turn lane is required for health, safety, and welfare of the road users.

D. Intersecting Streets

Separate left turn lanes are required on an intersecting street or access point connection when any two (2) or more of the following warrants are satisfied:

- 1. Intersecting Street/Connection to Arterial Streets
 - a. Posted speed limit of the intersecting street or access point connection is equal to or greater than thirty-five (35) mph.
 - b. When the Number of left turning vehicles from the intersecting street or access point connection is equal to or greater than thirty (30) vehicles during either A.M. or P.M. peak hour of the arterial street.
 - c. The arterial street which is being entered has been designated as a controlled access facility by the BOCC.

- d. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year.
 - e. It is determined by the Lee County Department of Transportation or the Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.
2. Intersecting Street/Connection to Collector Street
- a. Posted speed limit of the intersecting street or access point connection is equal to or greater than thirty five (35) mph.
 - b. Number of left turning vehicles from the intersecting street or access point connection is equal to or greater than sixty (60) vehicles during either the A.M. or P.M. peak hour of the collector street.
 - c. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year.
 - d. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.
3. Intersecting Street/Connection to Local Street
- a. Posted speed limit of the intersecting street or access point connection is equal to or greater than thirty (30) mph.
 - b. Number of left turning vehicles from the intersecting street or access point connection is equal to or greater than ninety (90) vehicles during either the A.M. or P.M. peak period of the local street.
 - c. Traffic Control of the intersecting street or access point connection is a traffic signal.
 - d. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.

DECELERATION AND RIGHT TURN LANES

A deceleration and right turn lane will be required when any two (2) or more of the following warrants are satisfied:

A. Arterial Street

- 1. Posted speed limit of the arterial street is equal to or greater than thirty-five (35) mph.
- 2. Number of right turning movements from the arterial street is equal to or greater than thirty (30) during either the A.M. or P.M. peak hour of the arterial street or the peak hour of the development when the arterial street AADT is less than 6,000 vpd or equal to or greater than twenty (20) vph during either the A.M. or P.M. peak hour of the arterial street or peak hour of the development when the arterial street AADT is equal to or greater than 6,000 vpd.
- 3. Available Sight Distance of a right turning vehicle to be seen by through traffic traveling in the same direction is less than the value shown in Table A-I for the design speed of the arterial street.
- 4. Arterial Street has been designated as a controlled access facility by the BOCC.
- 5. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year.
- 6. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.

B. Collector Street

- 1. Posted speed limit of the collector street is equal to or greater than thirty-five (35) mph.

2. Number of right turning movements from the collector street is equal to or greater than forty-five (45) during either the A.M. or P.M. peak hour of the collector street when the collector street AADT is less than 6,000 vpd or equal to or greater than thirty (30) vph during either the A.M. or P.M. peak hour of the collector street or peak hour of the development when the collector street AADT is equal to or greater than 6,000 vpd.
 3. Available Sight Distance for a right turning vehicle to be seen by through traffic traveling in the same direction is less than the value shown in Table A-I for the design speed of the collector street.
 4. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year.
 5. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.
- C. Local Street
1. Posted speed limit of the local street is equal to or greater than thirty (30) mph.
 2. Number of right turning movements from the local street is equal to or greater than sixty (60) during either the A.M. or P.M. peak hour of the local street.
 3. Available Sight Distance for a right turning vehicle to be seen by through traffic traveling in the same direction is less than the value shown in Table A-I for the design speed of the local street.
 4. Traffic Control of the intersecting street or access point connection is a traffic signal.
 5. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.
- D. Separate Right Turn Lanes are required on an intersecting street or access point connection when any two (2) or more of the following warrants are satisfied.
1. Intersecting Street/Connection to Arterial Street
 - a. Posted Speed Limit of the intersecting street or access point connection is equal to or greater than forty five (45) mph.
 - b. Number of right turning vehicles from the intersecting street or access point connection is equal to or greater than sixty (60) during either the A.M. or P.M. peak hour of the arterial street.
 - c. Arterial street which is being entered has been designated as a controlled access facility by the BOCC.
 - d. Traffic control of the intersecting street or access point connection is by a traffic signal.
 - e. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.
 2. Intersecting Street/Connection to Collector Street
 - a. Posted speed limit of the intersecting street or access point connection is equal to or greater than thirty five (35) mph.
 - b. Number of right turning movements from the intersecting street or access point connection is equal to or greater than ninety (90) during either the A.M. or P.M. peak hour of the collector street.
 - c. Traffic control of the intersecting street or access point connection is by a traffic signal.
 - d. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.

3. Intersecting Street/Connection to Local Street

- a. Posted speed limit of the intersecting street or access point connection is equal to or greater than thirty (30) mph.
- b. Number of right turning movements from the intersecting street or access point connection is equal to or greater than one hundred and twenty (120) during either the A.M. or P.M. peak hour of the local street.
- c. Traffic control of the intersecting street or access point connection is a traffic signal.

V. DESIGN

- I. Deceleration lanes consist of two distinct sections. The transition section is the distance needed for vehicles to achieve transfer from the through lane to the turn lane. The deceleration section is the distance needed to slow to a stop.

FDOT has tabulated standards for these distances, but those apply to typical rural highways. Under county urbanized conditions drivers begin deceleration immediately upon entry into the transition section and arrive at the deceleration section at lower speeds than the posted speed. Under urbanized conditions AASHTO recommends a deceleration rate of 10 ft. per sec. per sec. The table below represents a set of calculated County standards which differ from the FDOT standards except for those roads with a posted speed of 45 mph or above. County standards shall be used on County roads, except controlled access roadways which will utilize the FDOT standards. FDOT will specify requirements on State Highways. FDOT standards are found in the Florida Design Manual.

<u>Design Speed (mph)</u>	<u>Transition Distance (ft)</u>	<u>Deceleration Distance (ft)</u>	<u>Total Distance (ft)</u>
30	75	50	125
35	80	75	155
40	85	100	185
45	See FDM Section 212	See FDM Section 212	See FDM Section 212
50		See FDM Section 212	
55		See FDM Section 212	

The initial 50 feet (100 feet for a dual turn lane) of the transition length shall consist of pavement taper and the remaining length shall be the full width of the deceleration lane (see Figures FB-1 and FB-2).

II. DESIGN OF LEFT AND RIGHT TURN LANES

Where left and right turn lanes are required, storage lanes shall be used in conjunction with deceleration lanes and their lengths shall be added to the required transition and deceleration length.

A. For calculating the storage requirements for unsignalized intersections:

- a. For left turn lanes use the number of vehicles that will arrive in two minutes during the design peak hour:

$$N = \frac{V}{30} * L$$

Where:

N= length of storage required (round to the next full vehicle length)

V = Number of turning vehicles during the peak hour of generator in the design year

L = length of vehicle, including headway (use 25 feet as a minimum). A longer average vehicle length may be required if the vehicle mix includes a large number of trucks or buses.

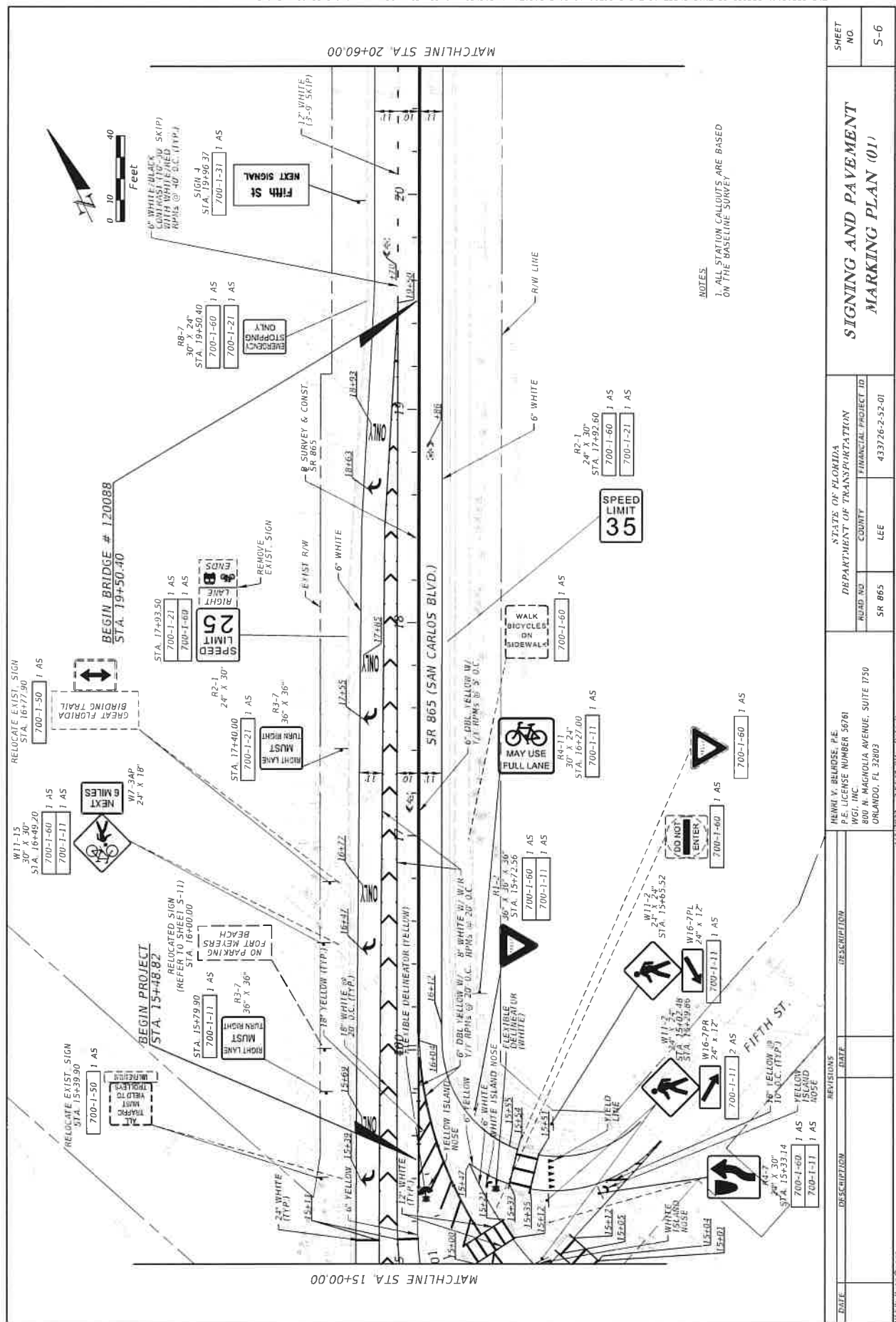
- b. For right turn lane storage length, use the number of vehicles that will arrive in one minute during the design peak hour:

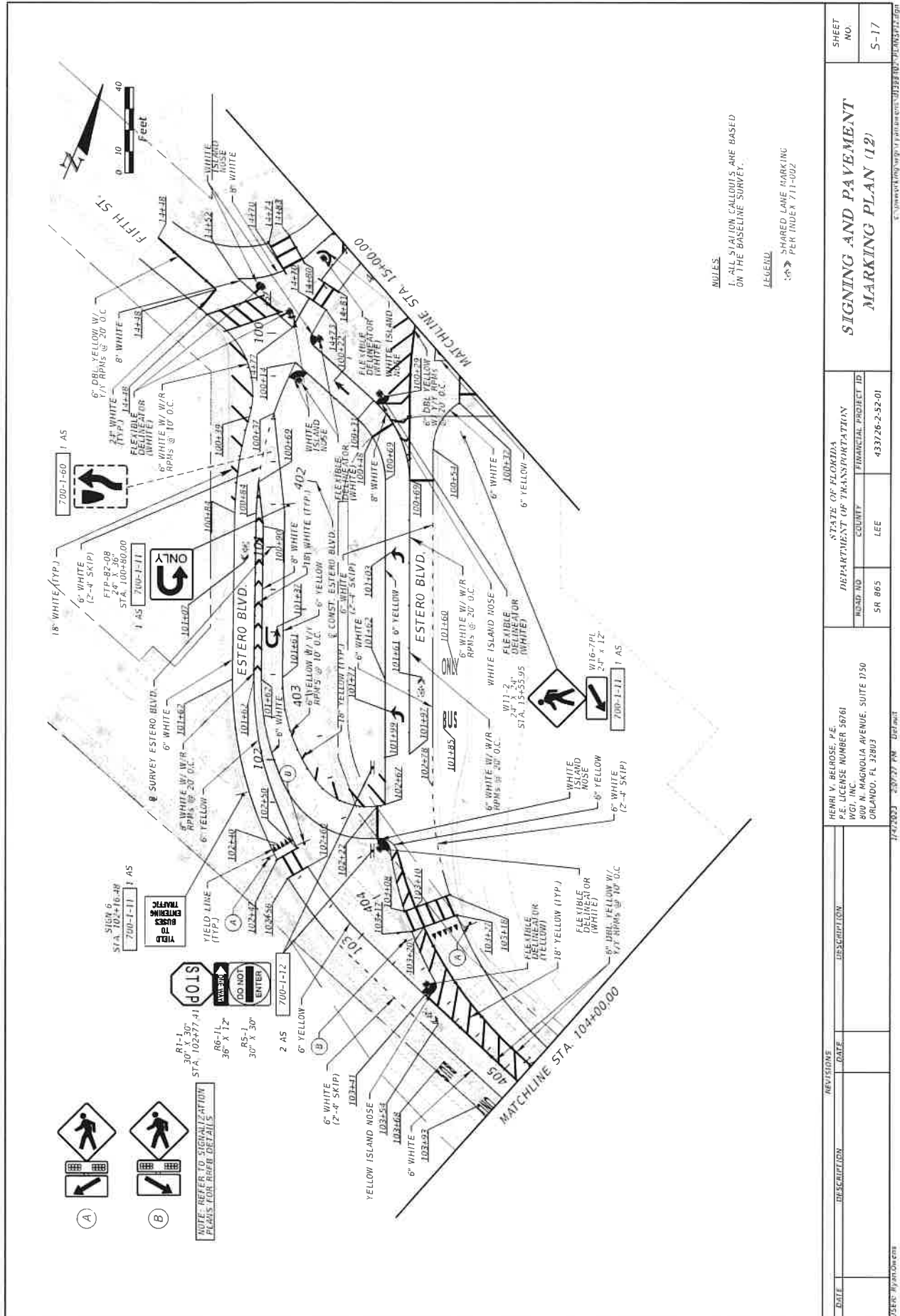
LEE COUNTY LEE PLAN TABLE 2(a)

TABLE 2(a)
CONSTRAINED STATE AND COUNTY ROADS

ROADWAY	SEGMENT	MAINTENANCE RESPONSIBILITY	CONSTRAINED CONDITIONS
Captiva Road	Blind Pass/ South Seas Plantation	County	ROW, Scenic, Aesthetic, Environmental
Daniels Parkway	Metro Parkway/ I-75	County	ROW
Estero Boulevard	Center Street/ Big Carlos Pass	County	ROW, Scenic, Aesthetic
Hickory Boulevard	Big Carlos Pass/ Bonita Beach Road	County	Scenic, Aesthetic, Environmental
McGregor Boulevard (SR 867)	Colonial Boulevard/ College Parkway	State	ROW, Scenic, Aesthetic, Historic, Environmental
Pine Island Road (Matlacha)	Shoreview Drive/ Little Pine Island	County	ROW, Scenic, Aesthetic, Historic, Environmental
San Carlos Boulevard (SR 865) (Matanzas Bridge)	Center Street/ Main Street	State	ROW, Scenic, Aesthetic, Environmental
US 41	South of Daniels Road/ North Airport Road	State	ROW
Gulf Boulevard	Boca Grande	County	Scenic, Aesthetic, Historic, Environmental
Stringfellow Road	8th Avenue/ Main Street	County	Environmental

**FDOT PLANS FOR ESTERO BLVD @
SAN CARLOS BLVD**

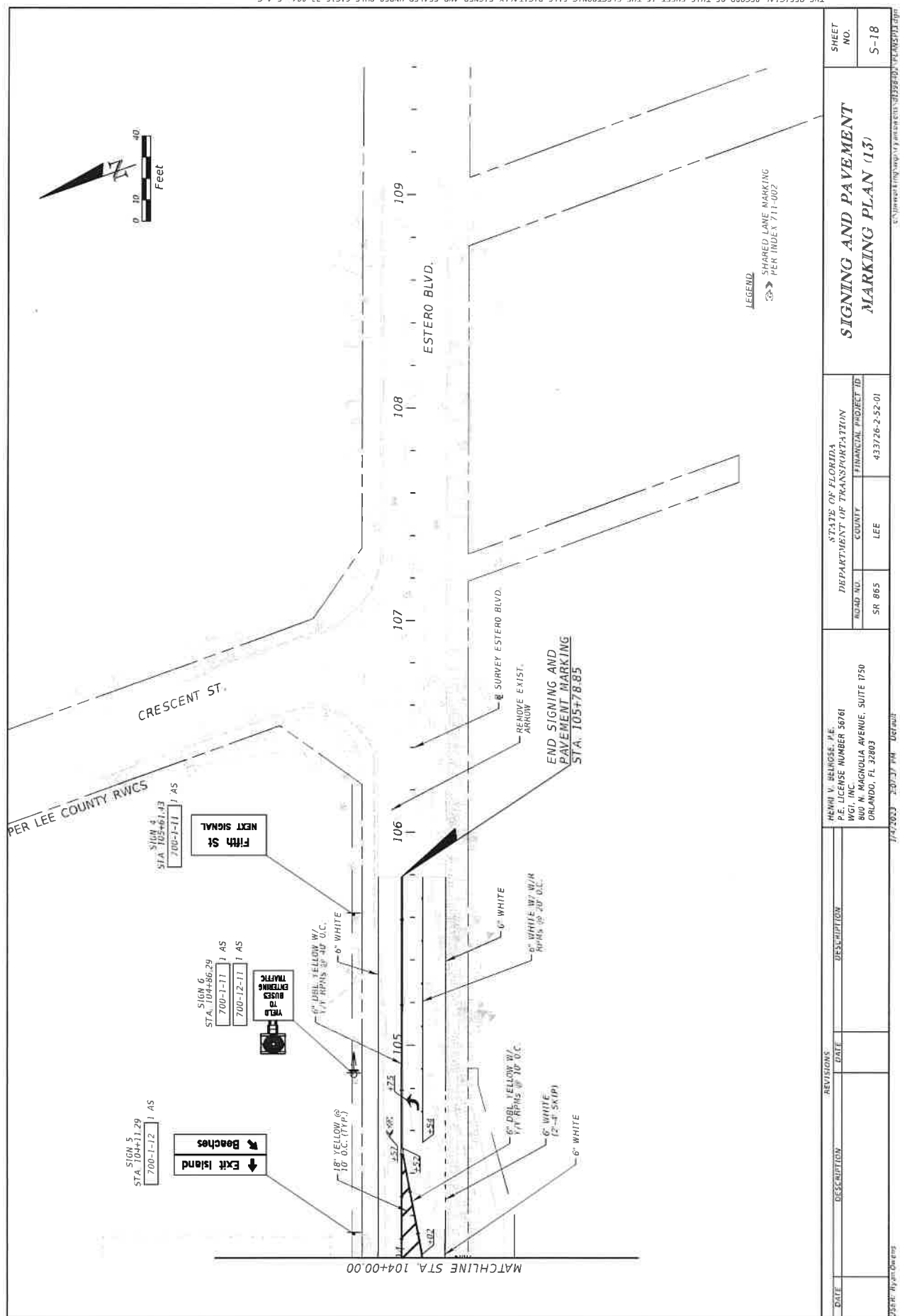




SIGNING AND PAVEMENT MARKING PLAN (12)

REVISIONS		DESCRIPTION	
DATE	DESCRIPTION	DATE	DESCRIPTION

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION		SHEET NO. S-17	
ROAD NO. SR 865	COUNTY LEE	FINANCIAL PROJECT ID 433726-2-52-01	
HENRI V. BELOUSE, P.E. P.E. LICENSE NUMBER 56761 WGI, INC. 800 N. MAGNOLIA AVENUE, SUITE 1750 ORLANDO, FL 32803		USER: Wpawmcm	



ITE PASS-BY RATES

Vehicle Pass-By Rates by Land Use										
Source: ITE Trip Generation Manual , 11th Edition										
Land Use Code	945									
Land Use	Convenience Store/Gas Station									
Setting	General Urban/Suburban									
Time Period	Weekday AM Peak Period									
# Data Sites	16 Sites with between 2 and 8 VFP					28 Sites with between 9 and 20 VFP				
Average Pass-By Rate	60% for Sites with between 2 and 8 VFP					76% for Sites with between 9 and 20 VFP				
Pass-By Characteristics for Individual Sites										
			Survey		Pass-By	Non-Pass-By Trips			Adj Street Peak	
GFA (000)	VFP	State or Province	Year	# Interviews	Trip (%)	Primary (%)	Diverted (%)	Total (%)	Hour Volume	Source
2	8	Maryland	1992	46	87	13	0	13	2235	25
2.1	6	Maryland	1992	26	58	23	19	42	2080	25
2.1	6	Maryland	1992	26	58	23	19	42	2080	25
2.2	8	Maryland	1992	31	47	34	19	53	1785	25
2.2	< 8	Indiana	1993	79	56	6	38	44	635	2
2.2	8	Maryland	1992	35	78	9	13	22	7080	25
2.3	6	Maryland	1992	37	32	41	27	68	2080	25
2.3	< 8	Kentucky	1993	58	64	5	31	36	1255	2
2.3	6	Maryland	1992	37	32	41	27	68	2080	25
2.4	< 8	Kentucky	1993	—	48	17	35	52	1210	2
2.6	< 8	Kentucky	1993	—	72	15	13	28	940	2
2.8	< 8	Kentucky	1993	—	54	11	35	46	1240	2
3	< 8	Indiana	1993	62	74	10	16	26	790	2
3.6	< 8	Kentucky	1993	49	67	4	29	33	1985	2
3.7	< 8	Kentucky	1993	49	66	16	18	34	990	2
4.694	12	Maryland	2000	—	72	—	—	28	2440	30
4.694	12	Maryland	2000	—	78	—	—	22	1561	30
4.694	12	Maryland	2000	—	79	—	—	21	2764	30
4.848	12	Virginia	2000	—	55	—	—	45	1398	30
5.06	12	Pennsylvania	2000	—	84	—	—	16	3219	30
5.242	12	Virginia	2000	—	74	—	—	26	1160	30
5.242	12	Virginia	2000	—	71	—	—	29	548	30
5.488	12	Delaware	2000	—	80	—	—	20	—	30
5.5	12	Pennsylvania	2000	—	85	—	—	15	2975	30
4.2	< 8	Kentucky	1993	47	62	19	19	38	1705	2
4.694	16	Maryland	2000	—	90	—	—	10	2278	30
4.694	16	Delaware	2000	—	74	—	—	26	2185	30
4.694	16	Delaware	2000	—	58	—	—	42	962	30
4.694	16	Delaware	2000	—	84	—	—	16	2956	30
4.694	16	New Jersey	2000	—	79	—	—	21	1859	30
4.694	20	Delaware	2000	—	84	—	—	16	3864	30
4.848	16	Virginia	2000	—	68	—	—	32	2106	30
4.848	16	Virginia	2000	—	85	—	—	15	2676	30
4.848	16	Virginia	2000	—	75	—	—	25	3244	30
4.848	16	Virginia	2000	—	71	—	—	29	1663	30
4.993	16	Pennsylvania	2000	—	75	—	—	25	1991	30
5.094	16	New Jersey	2000	—	86	—	—	14	1260	30
5.5	16	Pennsylvania	2000	—	82	—	—	18	1570	30
5.543	16	Pennsylvania	2000	—	84	—	—	16	1933	30
5.565	16	Pennsylvania	2000	—	77	—	—	23	2262	30
5.565	16	Pennsylvania	2000	—	68	—	—	32	2854	30
5.565	16	New Jersey	2000	—	58	—	—	42	1253	30
5.565	16	New Jersey	2000	—	79	—	—	21	1928	30
5.565	16	New Jersey	2000	---	84	---	---	16	1953	30

Vehicle Pass-By Rates by Land Use										
Source: ITE Trip Generation Manual , 11th Edition										
Land Use Code	945									
Land Use	Convenience Store/Gas Station									
Setting	General Urban/Suburban									
Time Period	Weekday PM Peak Period									
# Data Sites	12 Sites with between 2 and 8 VFP					28 Sites with between 9 and 20 VFP				
Average Pass-By Rate	56% for Sites with between 2 and 8 VFP					75% for Sites with between 9 and 20 VFP				
	Pass-By Characteristics for Individual Sites									
										</

TRIP GENERATION EQUATIONS

Health/Fitness Club (492)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 6

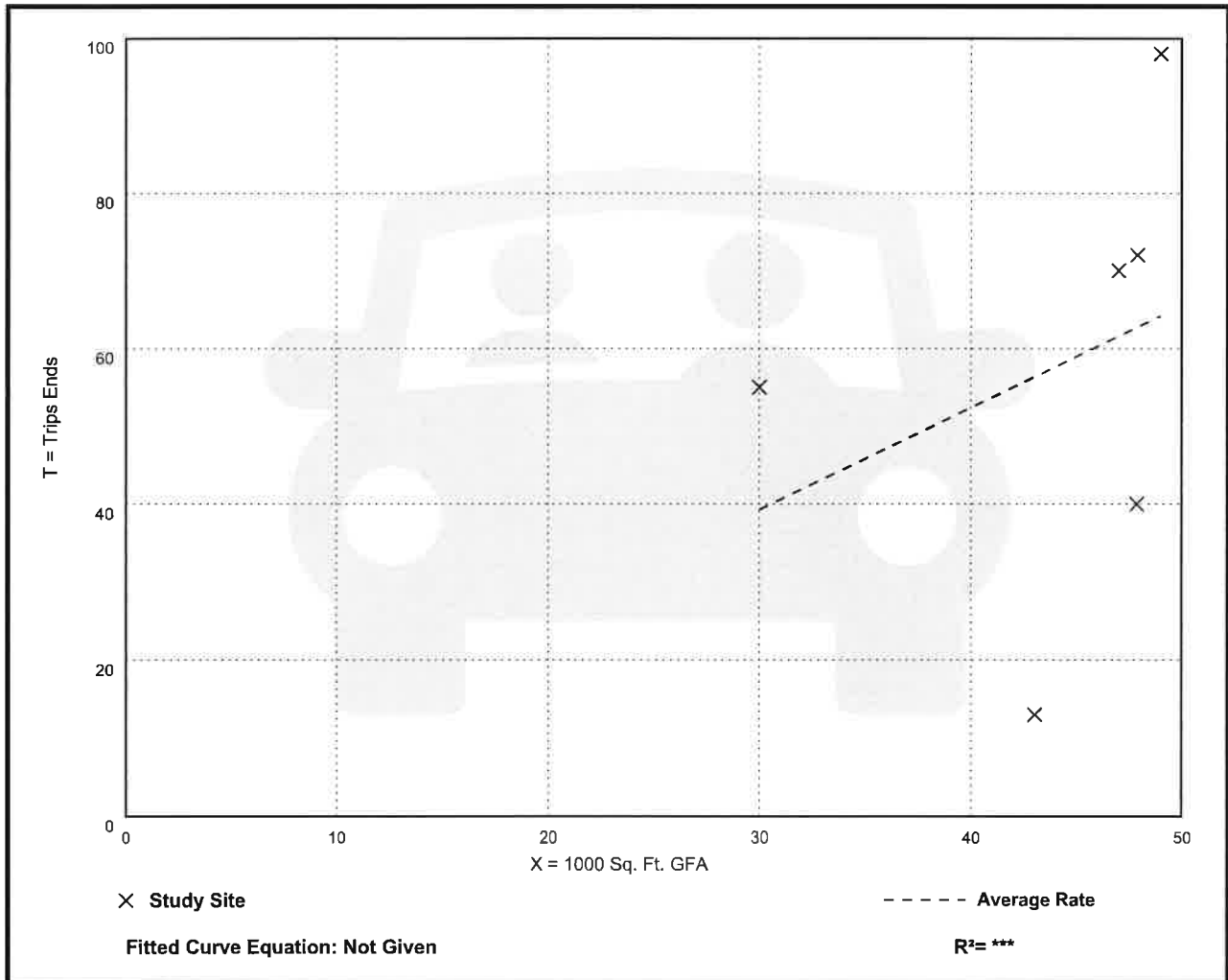
Avg. 1000 Sq. Ft. GFA: 44

Directional Distribution: 51% entering, 49% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
1.31	0.30 - 2.00	0.64

Data Plot and Equation



Health/Fitness Club (492)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 8

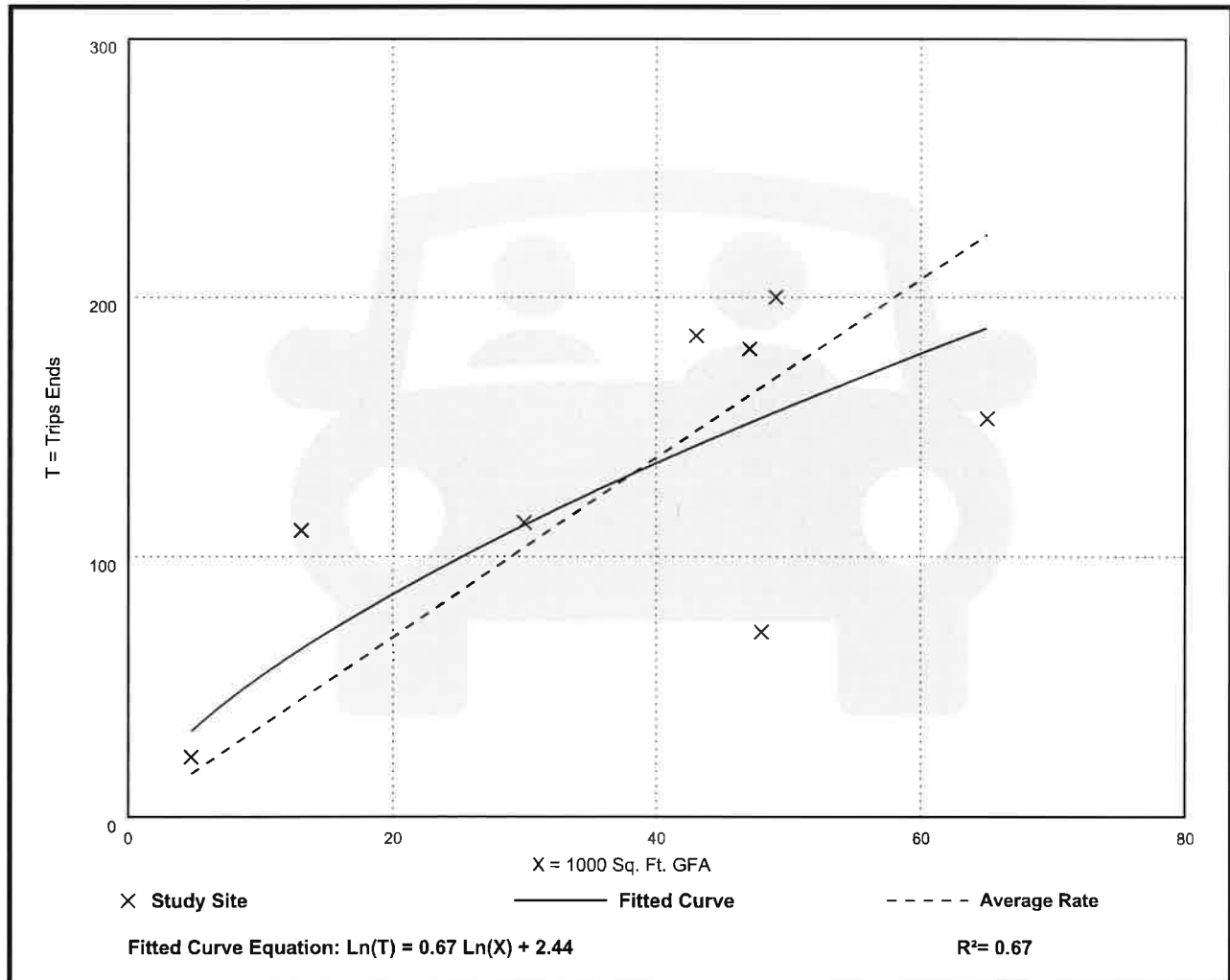
Avg. 1000 Sq. Ft. GFA: 37

Directional Distribution: 57% entering, 43% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
3.45	1.48 - 8.37	1.57

Data Plot and Equation



Convenience Store/Gas Station - GFA (2-4k) (945)

Vehicle Trip Ends vs: Vehicle Fueling Positions
On a: Weekday

Setting/Location: General Urban/Suburban

Number of Studies: 48

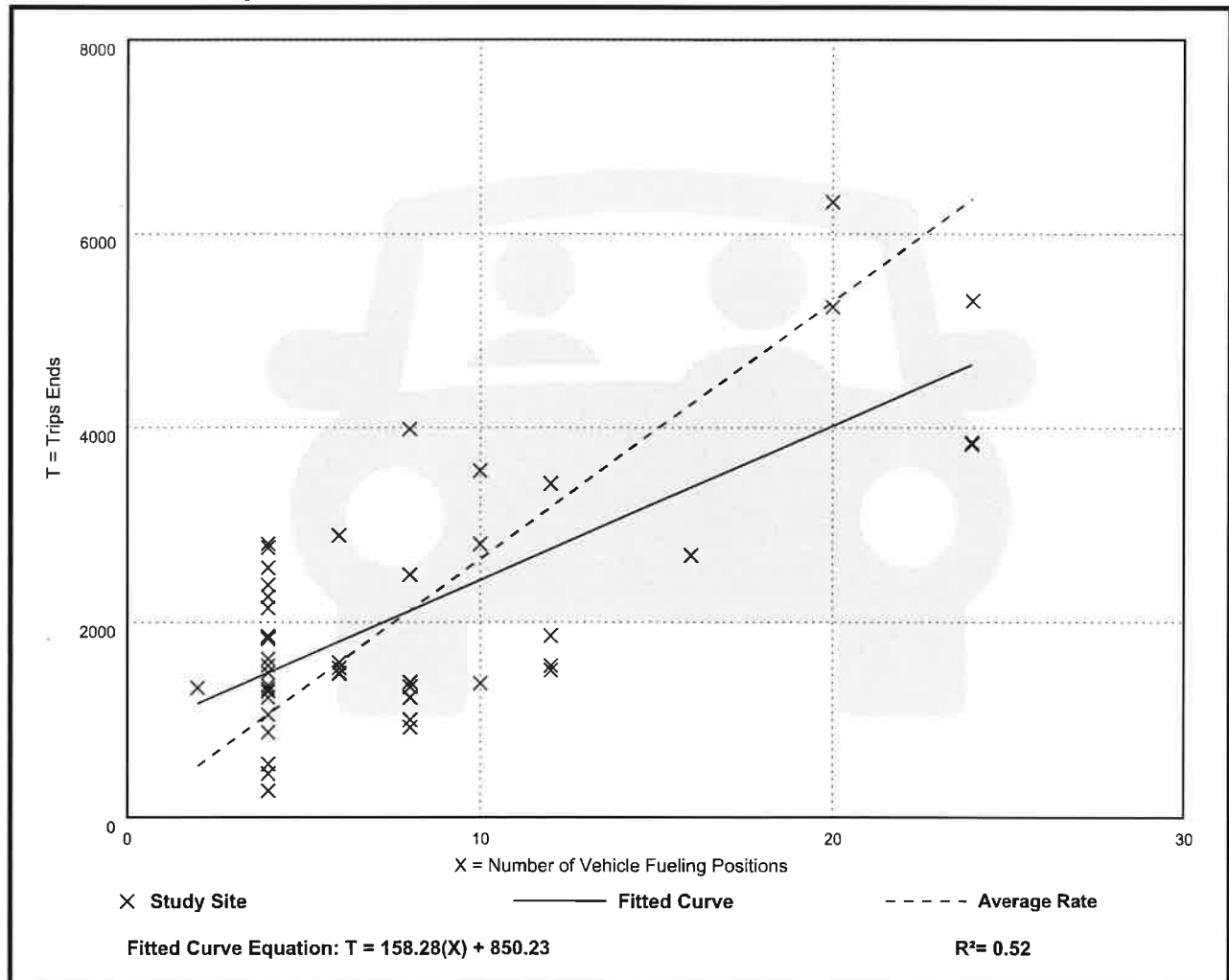
Avg. Num. of Vehicle Fueling Positions: 8

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Vehicle Fueling Position

Average Rate	Range of Rates	Standard Deviation
265.12	68.50 - 701.00	142.37

Data Plot and Equation



Convenience Store/Gas Station - GFA (2-4k) (945)

Vehicle Trip Ends vs: Vehicle Fueling Positions

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 76

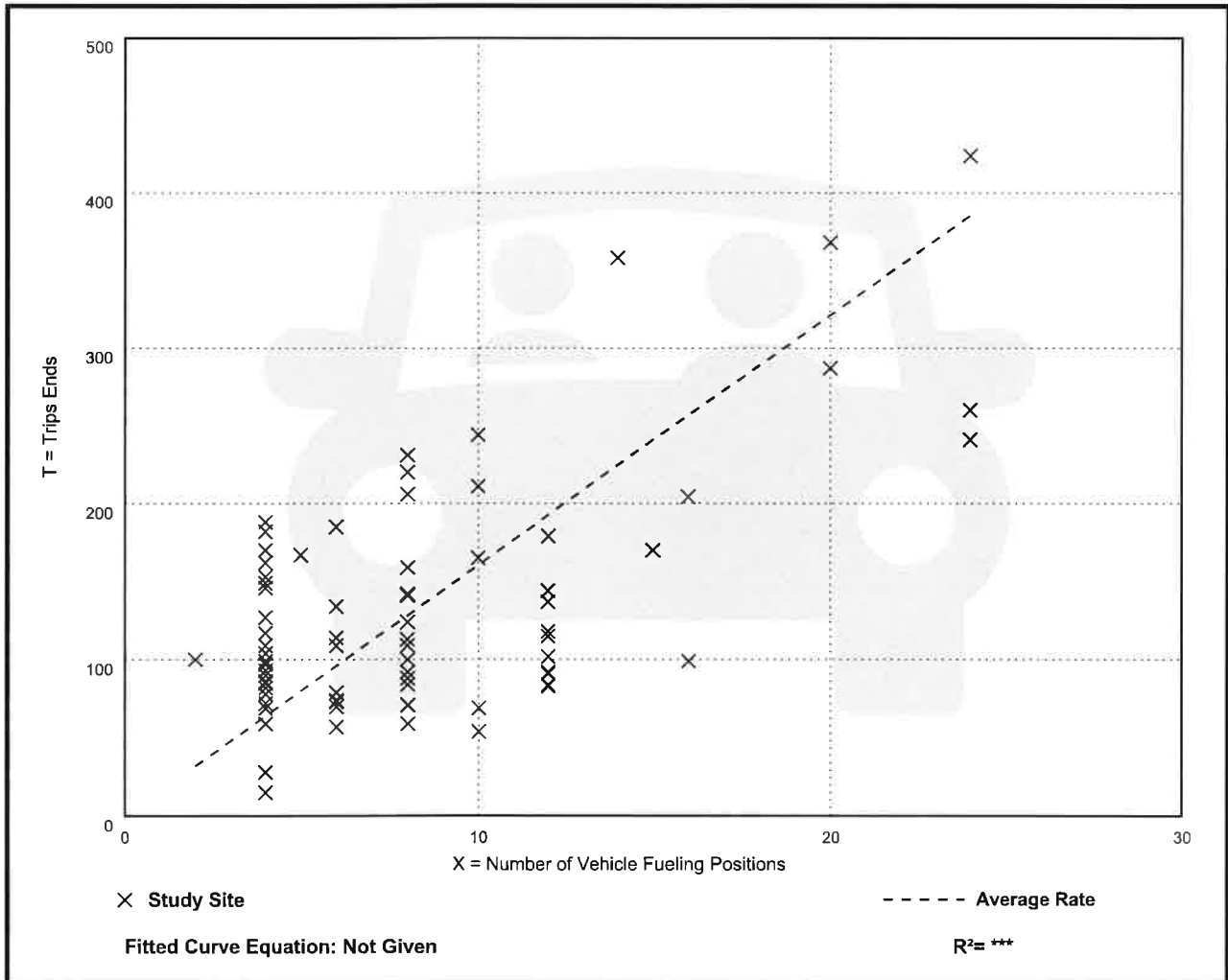
Avg. Num. of Vehicle Fueling Positions: 8

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Vehicle Fueling Position

Average Rate	Range of Rates	Standard Deviation
16.06	3.75 - 50.00	8.79

Data Plot and Equation



Convenience Store/Gas Station - GFA (2-4k) (945)

Vehicle Trip Ends vs: Vehicle Fueling Positions

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 93

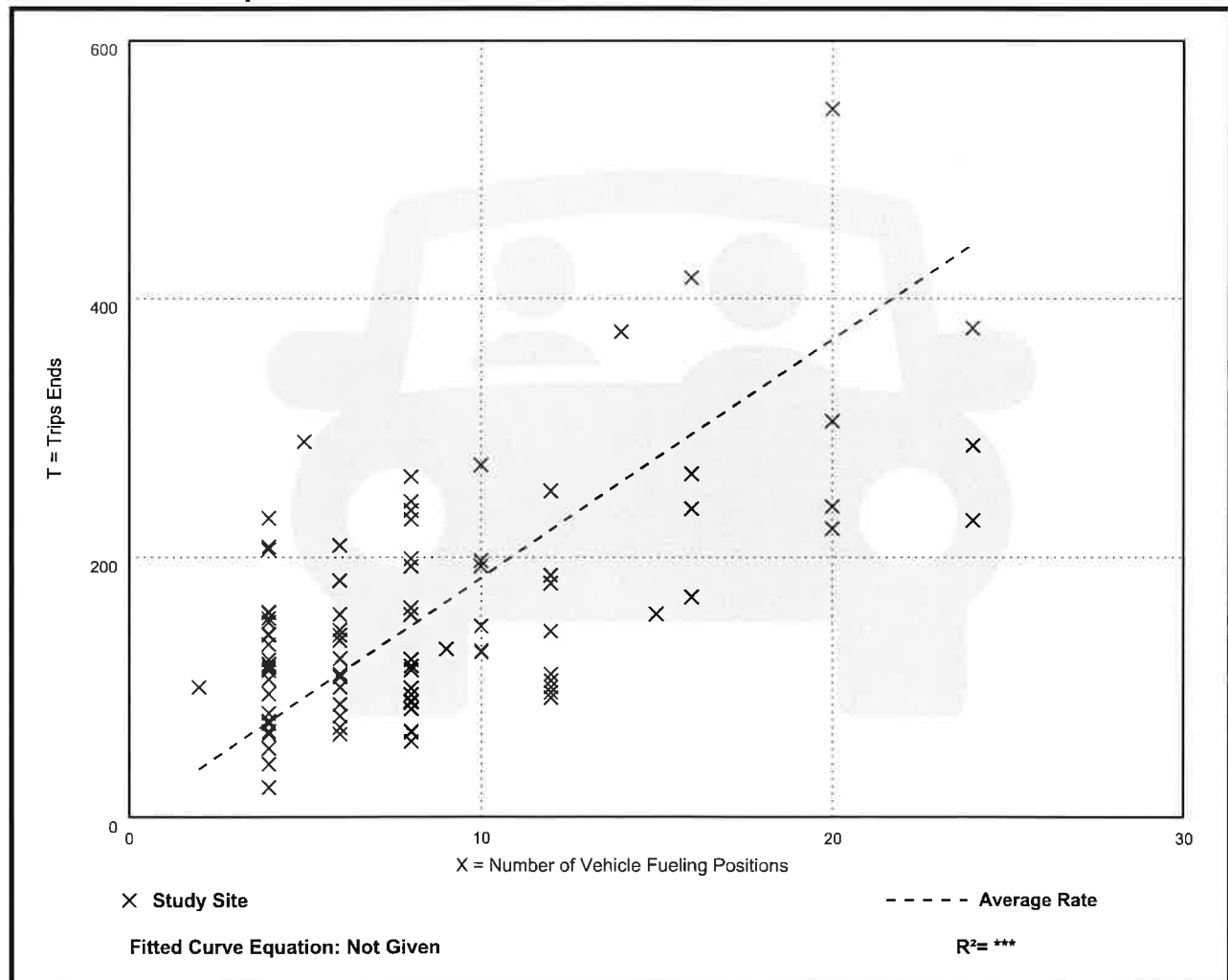
Avg. Num. of Vehicle Fueling Positions: 8

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Vehicle Fueling Position

Average Rate	Range of Rates	Standard Deviation
18.42	5.75 - 57.80	10.16

Data Plot and Equation



Convenience Store/Gas Station - GFA (4-5.5k) (945)

Vehicle Trip Ends vs: Vehicle Fueling Positions
On a: Weekday

Setting/Location: General Urban/Suburban

Number of Studies: 5

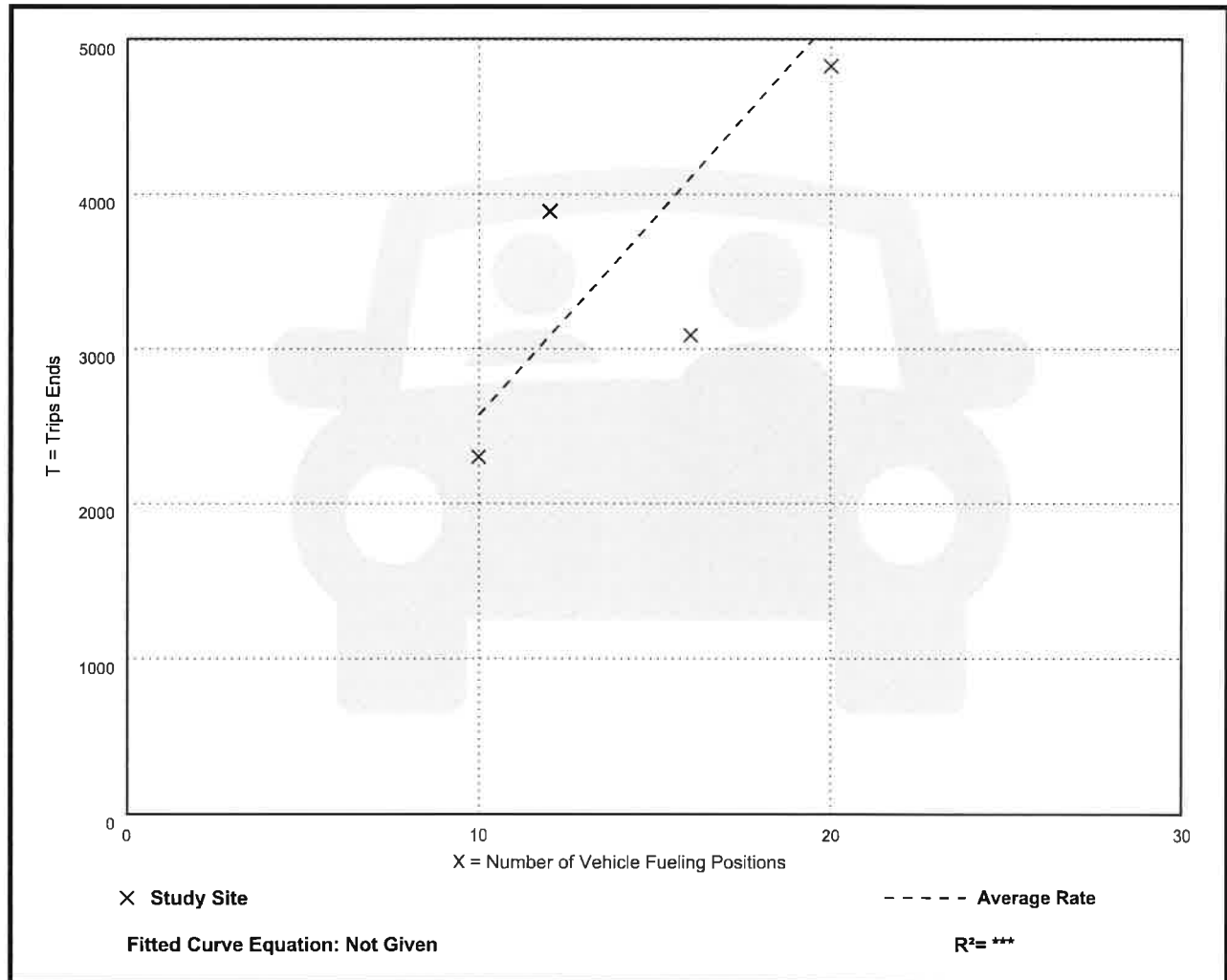
Avg. Num. of Vehicle Fueling Positions: 14

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Vehicle Fueling Position

Average Rate	Range of Rates	Standard Deviation
257.13	193.00 - 324.17	57.53

Data Plot and Equation



Convenience Store/Gas Station - GFA (4-5.5k) (945)

Vehicle Trip Ends vs: Vehicle Fueling Positions

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 18

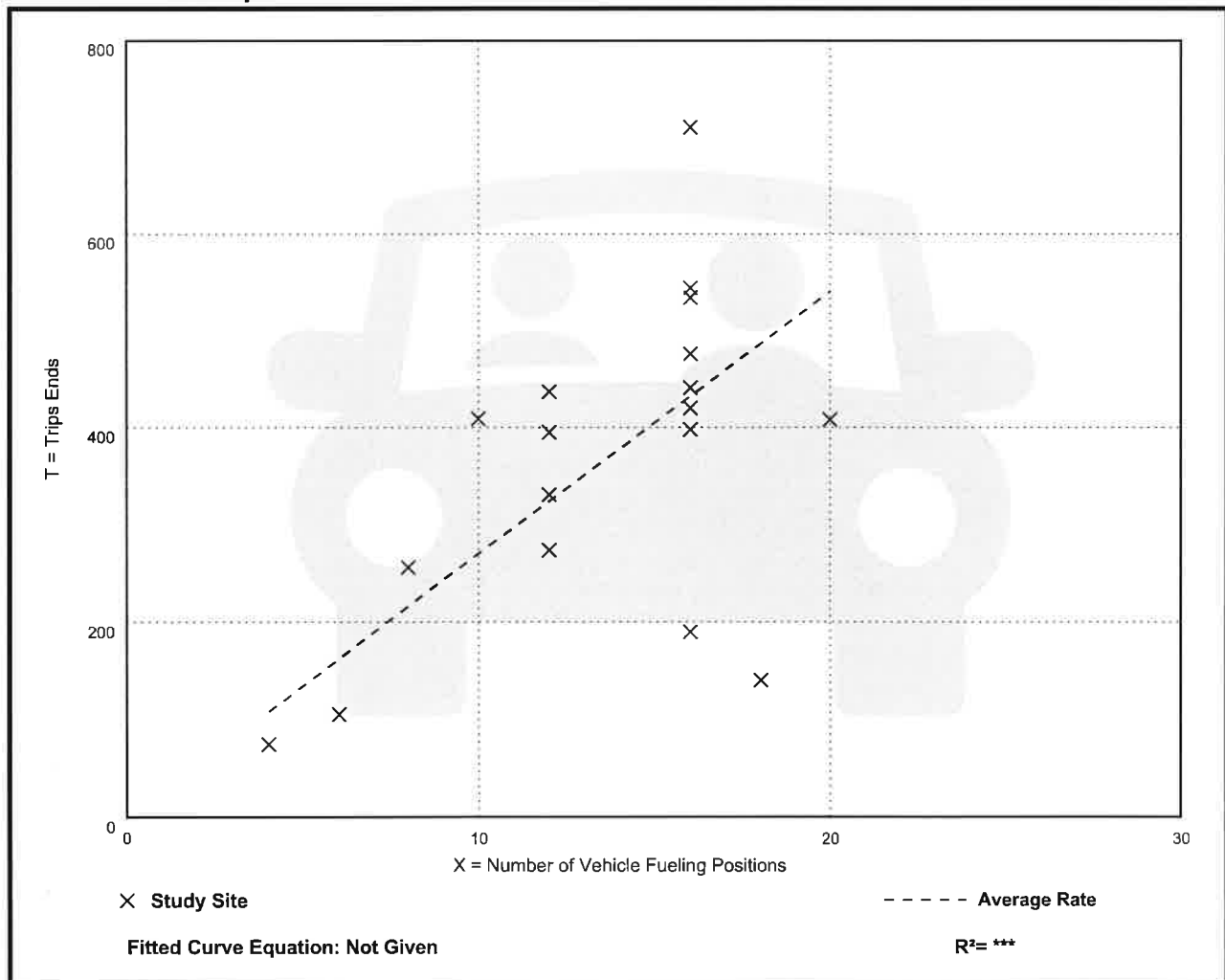
Avg. Num. of Vehicle Fueling Positions: 13

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Vehicle Fueling Position

Average Rate	Range of Rates	Standard Deviation
27.04	7.78 - 44.38	9.88

Data Plot and Equation



Convenience Store/Gas Station - GFA (4-5.5k) (945)

Vehicle Trip Ends vs: Vehicle Fueling Positions

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 23

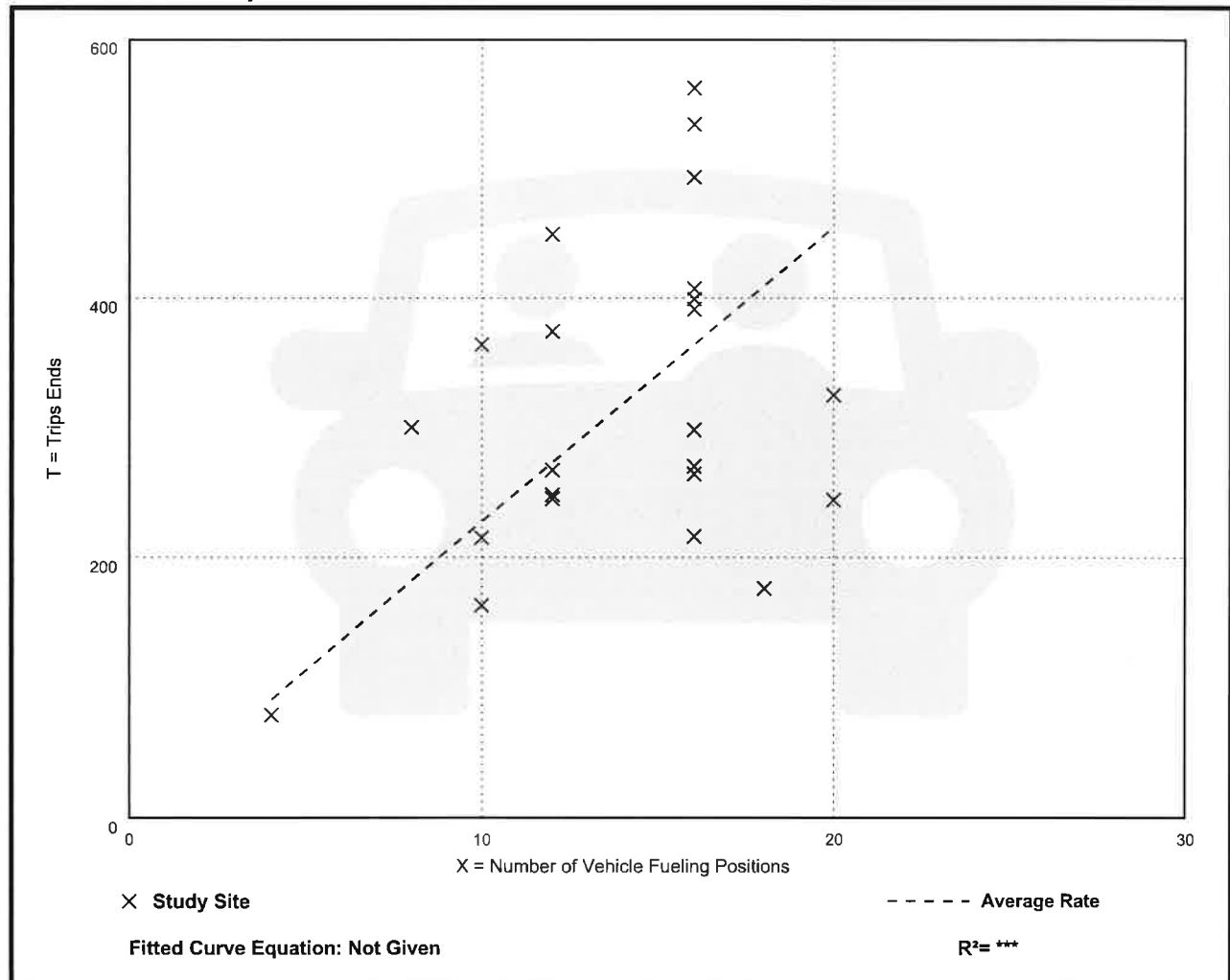
Avg. Num. of Vehicle Fueling Positions: 14

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Vehicle Fueling Position

Average Rate	Range of Rates	Standard Deviation
22.76	9.78 - 37.50	8.49

Data Plot and Equation



Convenience Store/Gas Station - VFP (2-8) (945)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday

Setting/Location: General Urban/Suburban

Number of Studies: 34

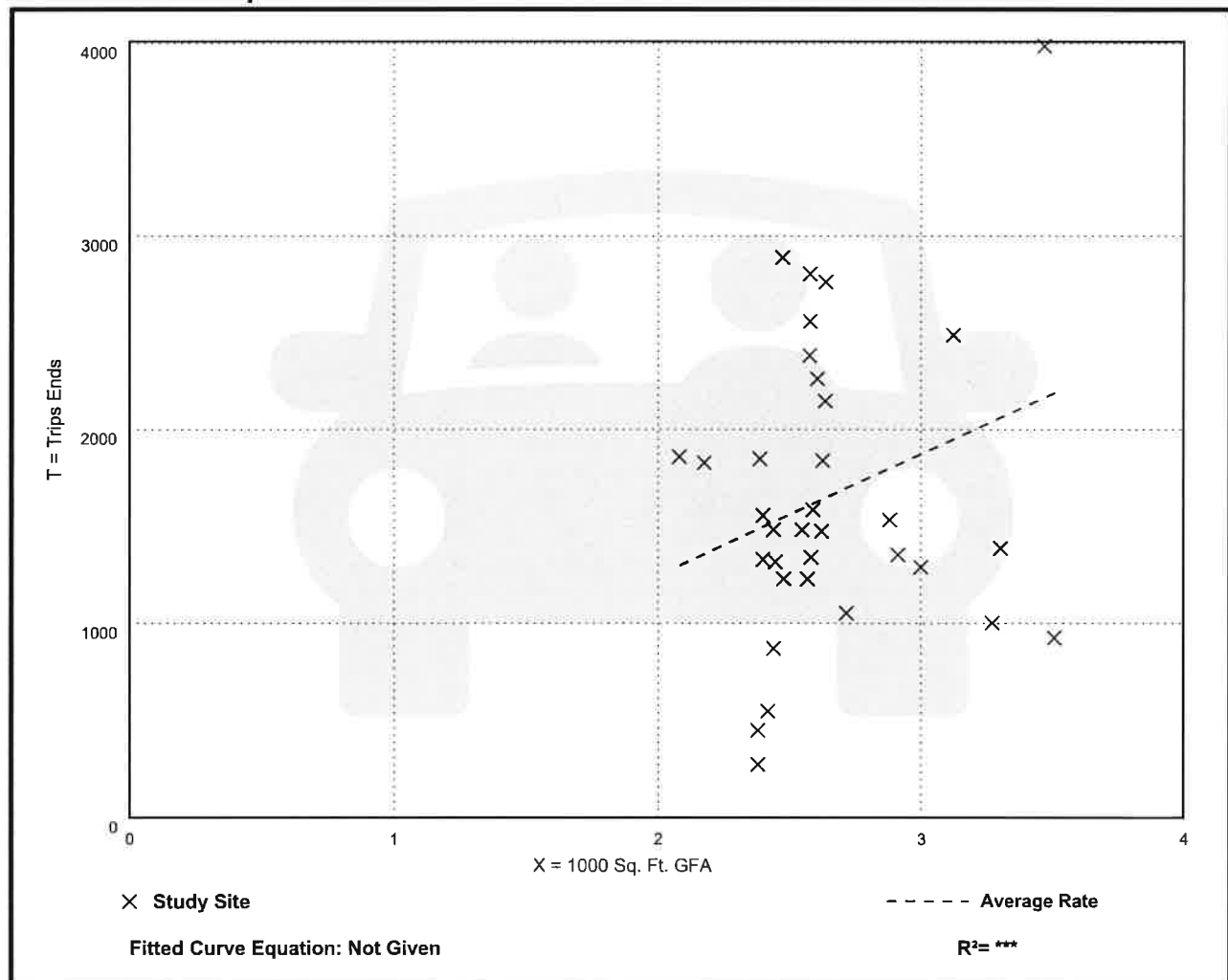
Avg. 1000 Sq. Ft. GFA: 3

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
624.20	115.13 - 1167.27	283.35

Data Plot and Equation



Convenience Store/Gas Station - VFP (2-8) (945)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 57

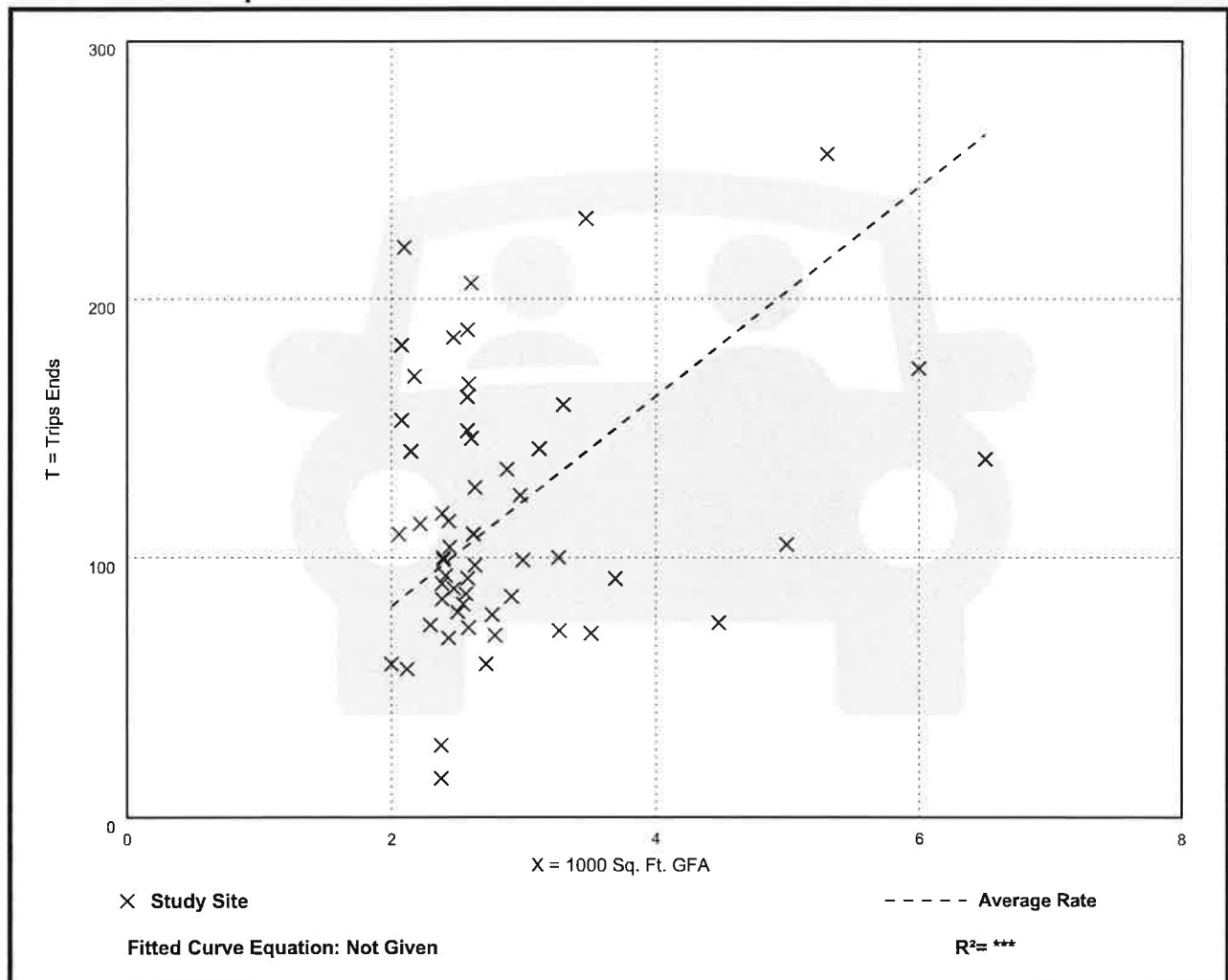
Avg. 1000 Sq. Ft. GFA: 3

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
40.59	6.30 - 104.76	19.18

Data Plot and Equation



Convenience Store/Gas Station - VFP (2-8) (945)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 67

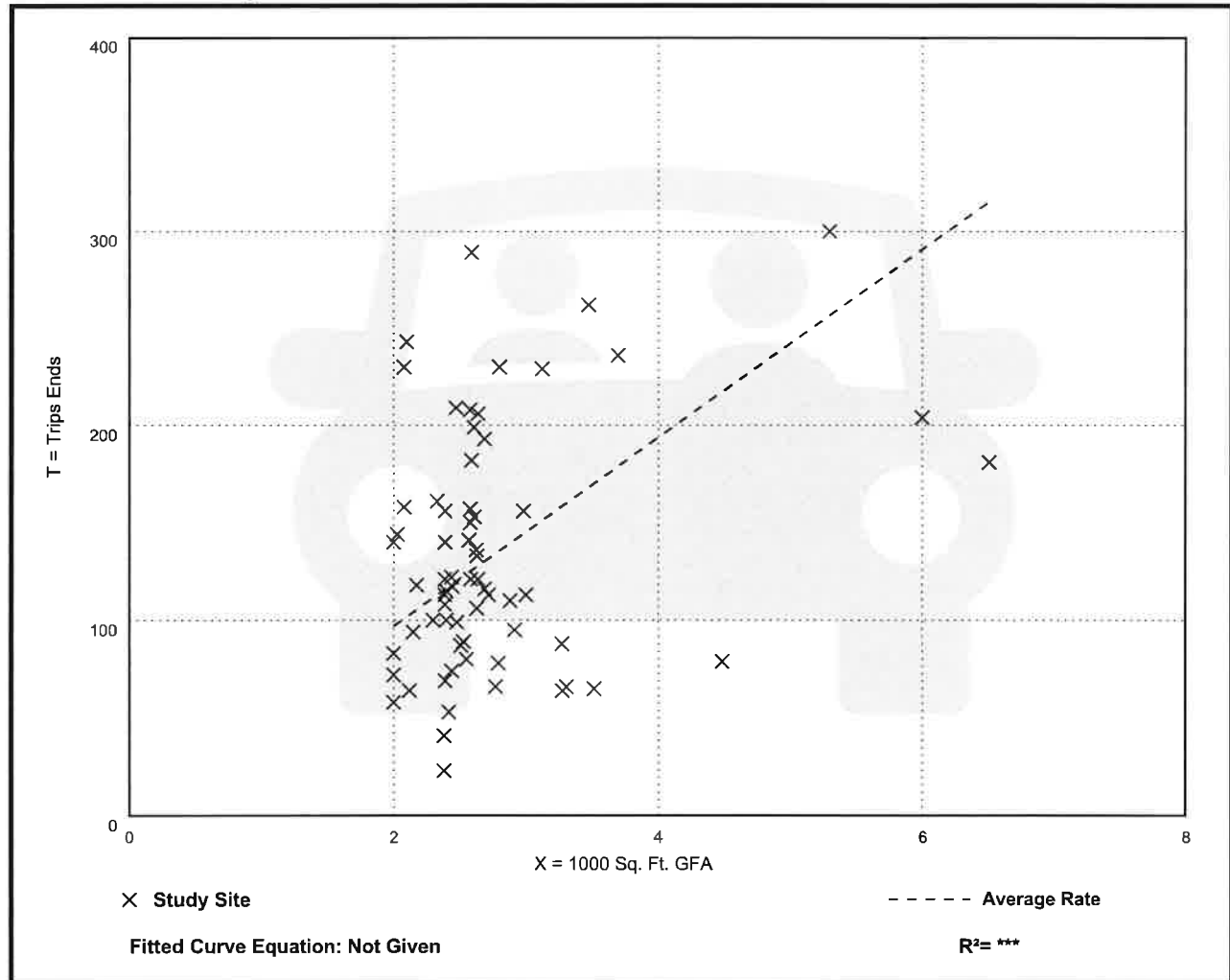
Avg. 1000 Sq. Ft. GFA: 3

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
48.48	9.66 - 115.71	22.59

Data Plot and Equation



TRIP GENERATION COMPARISON

LUC 945

**Trip Generation – Based on Refueling Positions
Previous 7-Eleven**

Land Use	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Convenience Store/ Gas Station ITE LUC 945 (4 Refueling Positions)	32	32	64	37	37	74	1,483

**Trip Generation – Based on C-Store Floor Area
Previous 7-Eleven**

Land Use	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Convenience Store/ Gas Station ITE LUC 945 (2,618 Sq. Ft. C-Store)	53	53	106	64	63	127	1,634

**Trip Generation – Based on Refueling Positions
Proposed 7-Eleven**

Land Use	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Convenience Store/ Gas Station ITE LUC 945 (4 Refueling Positions)	54	54	108	46	45	91	1,029

**Trip Generation – Based on C-Store Floor Area
Proposed 7-Eleven**

Land Use	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Convenience Store/ Gas Station ITE LUC 945 (4,700 Sq. Ft. C-Store)	95	96	191	114	114	228	2,934



THE NEIGHBORHOOD COMPANY

841 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD) Planned Development Rezone

500' Property Owner List

Buffer: 500	List Size: 115					
Folio	Owner Name	OwnerName2	Address	City	State	Zip
10229508	SOUTHLAND CORPORATION	CORPORATE TAX DEPT	2711 N HASKELL AVE	DALLAS	TX	75204
10229221	PAN-O-GOLD BLACK HILLS CO		444 E SAINT GERMAIN ST	SAINT CLOUD	MN	56304
10229222	SAND CASTLE COTTAGES LLC		6541 WINKLER RD	FORT MYERS	FL	33919
10229223	HOFFMAN ELIOT B &		3250 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10229224	EUCALYPTUS PARK	KATHERN CANTLON	131 MADISON CT	FORT MYERS BEACH	FL	33931
10229225	PIERATT KIMBERLY NICOLE		4201 N OCEAN DR #607	HOLLYWOOD	FL	33019
10229226	DAR LAND HOLDINGS LLC		3487 COUNTY LINE RD	LUXEMBURG	WI	54217
10229227	ESTERO 3 LLC		5359 N RD 400 W	BARGERSVILLE	IN	46106
10229229	PLANTZ RONALD A		1033 S BUTTERNUT CIR	FRANKFORT	IL	60423
10229232	PERSAUD PROPERTIES FL		385 SEMINOLE WAY	FORT MYERS BEACH	FL	33931
10229235	RED COCONUT RV PARK LLP		PO BOX 990	ESTERO	FL	33929
10229279	KHAN VANESSA		1721 NE 12TH ST	CAPE CORAL	FL	33909
10229280	DODD FELIX C III &		1906 GLEN ECHO RD STE 150402	NASHVILLE	TN	37215
10229281	TROPICAL SHORES WAY LLC		293 GRACE POINTE CT	WAYZATA	MN	55391
10229282	CONTE STACEY		136 EUCALYPTUS CT	FORT MYERS BEACH	FL	33931
10229289	DONOGHUE CAROL		256 OSTEGO DR	FORT MYERS BEACH	FL	33931
10229290	MORRIS GEORGE S & ANNE R		159 COMPO RD S	WESTPORT	CT	6880
10229291	REDENIUS JOSHUA R		135 EUCALYPTUS CT	FORT MYERS BEACH	FL	33931
10229292	MCCULLOUGH J MORLEY &		661 TURTLE BAY BLVD	ENNISMORE	ON, CANADA	K0L 1T0
10229293	LTE 4060 LLC		2200 CR C W STE 2205	ROSEVILLE	MN	55113
10229294	118 VOORHIS INC		243 EASTCOURT RD	OAKVILLE	ON, CANADA	L6J 4Y5
10229295	BELGER RANDALL J &		7913 BUCCANEER DR	FORT MYERS BEACH	FL	33931
10229296	KAUTH DIANA TR		122 VOORHIS ST	FORT MYERS BEACH	FL	33931
10229297	LONG STEVE A & ANN M		110 ARROWHEAD CT	CARLISLE	KY	40311
10229299	WATERS KRISTIN		131 LONGFELLOW RD	WORCESTER	MA	1602
10229300	ELLIOTT KATHLEEN J TR		1401 ROCHESTER AVE	IOWA CITY	IA	52245
10229301	ALLISON ROBERT L &		3001 W WATERS AVE	TAMPA	FL	33614
10229302	BREEVES RD LLC		1923 W MUKILTEO BLVD	EVERETT	WA	98203



10229303	NASH ERNEST E & EVELYN M		270 KINGS RD	MADISON	NJ	7940
10229304	101 EUCALYPTUS LLC		102 CHRISTOPHER COLOMBUS DR #704	JERSEY CITY	NJ	7302
10229305	HUMBARD PAUL W & BRENDA K		1012 OAK RIDGE DR	RICHMOND	MO	64085
10229306	DAVIDSON KIM M TR		16 PLANTATION RD	LACONIA	NH	3246
10229307	LOFFRENO CHRISTIAN P		17916 GREY HERON CT	FORT MYERS BEACH	FL	33931
10229308	FORT MYERS BEACH FIRE CONTROL		PO BOX 2880	FORT MYERS BEACH	FL	33932
10229310	KENT PROPERTIES LLC		3226 HILLTOP RD	SPRINGFIELD	IL	62712
10229311	BRANN REGINALD & BEVERLY		5414 FALCON CREST DR	MACHESNEY PARK	IL	61115
10229312	CUSSON CHARLES E TR		110/112 VOORHIS ST	FORT MYERS BEACH	FL	33931
10229313	BOUGHER JEFFERY ALAN		411 WALNUT ST, 12086	GREEN COVE SPRINGS	FL	32043
10562199	LANGSTON JOHN D		814 EL DORADO PKWY E	CAPE CORAL	FL	33904
10229314	NIGH NICK E & KIMBERLY		7300 TOWNSHIP RD	FINDLAY	OH	45840
10229315	CANTLON KATHERINE T TR		131 MADISON CT	FORT MYERS BEACH	FL	33931
10229316	MAHONEY JAMES M TR		1437 WOODLYNNE BLVD	LINWOOD	NJ	8221
10229317	PETERSON TERRY		2639 PURSLANE DR	FORT MYERS	FL	33905
10229319	EMBARQ FLORIDA INC	PROPERTY TAX DEPT	1025 ELDORADO BLVD	BROOMFIELD	CO	80021
10229320	EMBARQ FLORIDA INC	PROPERTY TAX DEPT	1025 ELDORADO BLVD	BROOMFIELD	CO	80021
10229321	EMBARQ FLORIDA INC	PROPERTY TAX DEPT	1025 ELDORADO BLVD	BROOMFIELD	CO	80021
10229322	ORVIS ROBERT M & MARY H		116 EUCALYPTUS CT	FORT MYERS BEACH	FL	33931
10229323	EVANSON D M & SUE A		15830 LAKE CANDLEWOOD DR	FORT MYERS	FL	33908
10229324	COLOME REAL ESTATE LLC		3176 S CATHAY CIR	AURORA	CO	80013
10229344	HOURIGAN MARK J & ALISON H		3311 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10611404	PERSAUD PROPERTIES FL INVESTME		361 SEMINOLE WAY	FORT MYERS BEACH	FL	33931
10620629	SHELL MOUND PARK OWNERS ASSN		SHELL MOUND BLVD	FORT MYERS BEACH	FL	33931
10229486	CHAPELL GARY L +		17226 WRIGLEY CIR	FORT MYERS	FL	33908
10229487	COOKE FRANCES J TR		226 DONORA BLVD	FORT MYERS BEACH	FL	33931
10229488	JASIONOWSKI GAIL M TR		220 DONORA BLVD	FORT MYERS BEACH	FL	33931
10229489	MYERS FRANCES P TR		15861 PRENTISS POINTE #101	FORT MYERS	FL	33908
10611139	HENRIKSON CLINTON & TARA L		1090 NINE ROCK RD	SHERMAN	IL	62684
10611140	DJ AREND FARMS INC		15759 ROAD 138	PAULDING	OH	45879
10229491	VELDEN BROCK VANDER +		6081 TUSCOBIA TRAIL	MCFARLAND	WI	53558
10229492	ARASIMOWICZ EDWARD A + DEBRA M		3041 SHELL MOUND BLVD	FORT MYERS BEACH	FL	33931
10229493	ROJASFANK CORP		3235 NW 37TH ST	MIAMI	FL	33142
10229494	KROGMANN ALAN J +		1016 ROSEWOOD DR	MANCHESTER	IA	52057



10229495	PERRINO NICHOLAS J		5106 FAIRVIEW CT	AVON	IN	46123
10229496	PERRY ROBERT J		366 ANDREW CRES, PO BOX 1105	BELLE RIVER	ON, CANADA	N0R 1A0
10229497	BUCK HERBERT J & CONSTANCE		5405 JAEGER RD	NAPLES	FL	34109
10229500	RATCLIFF ROBERT D &		121 VOORHIS ST	FORT MYERS BEACH	FL	33931
10229501	STAROWICZ DANIEL		117 VOORHIS ST	FORT MYERS BEACH	FL	33931
10229502	VANCE HERBER G & NORMA L TR	ANGELA RUSSELL	5961 MINK ST	MOUNT VERNON	OH	43050
10229503	RUSSELL EDGAR E & ANGELA TR		386 VALDEZ AVE	GOLETA	CA	93117
10229504	MITCHELL MICHAEL &		2706 NW 41ST PL	CAPE CORAL	FL	33993
10229505	DAGNESE MICHAEL P		3046 SHELL MOUND BLVD	FORT MYERS BEACH	FL	33931
10229506	FORT MYERS BEACH ART ASSN INC		PO BOX 2359	FORT MYERS BEACH	FL	33932
10229507	FORT MYERS BEACH FIRE CONTROL		PO BOX 2880	FORT MYERS BEACH	FL	33932
10462856	GULF WESTWIND CONDO		13611 MCGREGOR BLVD STE 6	FORT MYERS	FL	33919
10588714	SUSAN A KOZIOL TRUST +		3104 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10611402	PERSAUD PROPERTIES FL INVESTME		361 SEMINOLE WAY	FORT MYERS BEACH	FL	33931
10611403	PERSAUD PROPERTIES FL INVESTME		361 SEMINOLE WAY	FORT MYERS BEACH	FL	33931
10229557	JELSMA EVERT J + SUSANNE H TR		1037 BARRINGTON NW	GRAND RAPIDS	MI	49534
10229558	TUTTLE MARY E TR		958 KENSINGTON NW	GRAND RAPIDS	MI	49534
10229559	CARPENTER WILLIAM &		14617 15TH AVE	FLUSHING	NY	11357
10229560	DIMARZO DOMINICK TR		7786 MARIE DR # 74	SHELBY TOWNSHIP	MI	48316
10229561	DAVIDSON KIM M TR		16 PLANTATION ROAD	LACONIA	NH	3246
10229562	SMITS RONALD L + RACHEL A		3777 MIGHTY OAK TRL	GREEN BAY	WI	54313
10229563	COLE LISA D TR		3045 ESTERO BLVD #2C	FORT MYERS BEACH	FL	33931
10229564	SMITS RONALD L & RACHEL A		1000 MAIN ST	GREEN BAY	WI	54301
10229565	JACKSON FRANK A &		1031 NATIONAL RD	WHEELING	WV	26003
10229566	GILLESPIE JAMES R		1060 SIR FRANCIS CT	GALLATIN	TN	37066
10229567	JACKSON FRANK A &		1031 NATIONAL RD	WHEELING	WV	26003
10229568	ALBINO GLORIA M TR		3045 ESTERO BLVD #3D	FORT MYERS BEACH	FL	33931
10229569	MCINTOSH PATRICIA T		3045 ESTERO BLVD #4A	FORT MYERS BEACH	FL	33931
10229570	PAOLONI ROBERT J		7472 FERGUSON RD	KENT	OH	44240
10229571	FLAHERTY TRUST		52 GREENBRIAR DR	BERKELEY HEIGHTS	NJ	7922
10229572	WOLLESEN TIMOTHY H TR		15560 S KEELER ST	OLATHE	KS	66062
10229573	SHOFF SUSAN TR		3045 ESTERO BLVD UNIT 5C	FORT MYERS BEACH	FL	33931
10229574	TARULLI SYBIL		1745 WASHINGTON VALLEY RD	MARTINSVILLE	NJ	8836
10229575	SHOFF SUSAN TR		3045 ESTERO BLVD #5C	FORT MYERS BEACH	FL	33931



THE NEIGHBORHOOD COMPANY

841 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD) Planned Development Rezone

500' Property Owner List

Buffer: 500	List Size: 115					
Folio	Owner Name	OwnerName2	Address	City	State	Zip
10229508	SOUTHLAND CORPORATION	CORPORATE TAX DEPT	2711 N HASKELL AVE	DALLAS	TX	75204
10229221	PAN-O-GOLD BLACK HILLS CO		444 E SAINT GERMAIN ST	SAINT CLOUD	MN	56304
10229222	SAND CASTLE COTTAGES LLC		6541 WINKLER RD	FORT MYERS	FL	33919
10229223	HOFFMAN ELIOT B &		3250 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10229224	EUCALYPTUS PARK	KATHERN CANTLON	131 MADISON CT	FORT MYERS BEACH	FL	33931
10229225	PIERATT KIMBERLY NICOLE		4201 N OCEAN DR #607	HOLLYWOOD	FL	33019
10229226	DAR LAND HOLDINGS LLC		3487 COUNTY LINE RD	LUXEMBURG	WI	54217
10229227	ESTERO 3 LLC		5359 N RD 400 W	BARGERSVILLE	IN	46106
10229229	PLANTZ RONALD A		1033 S BUTTERNUT CIR	FRANKFORT	IL	60423
10229232	PERSAUD PROPERTIES FL		385 SEMINOLE WAY	FORT MYERS BEACH	FL	33931
10229235	RED COCONUT RV PARK LLP		PO BOX 990	ESTERO	FL	33929
10229279	KHAN VANESSA		1721 NE 12TH ST	CAPE CORAL	FL	33909
10229280	DODD FELIX C III &		1906 GLEN ECHO RD STE 150402	NASHVILLE	TN	37215
10229281	TROPICAL SHORES WAY LLC		293 GRACE POINTE CT	WAYZATA	MN	55391
10229282	CONTE STACEY		136 EUCALYPTUS CT	FORT MYERS BEACH	FL	33931
10229289	DONOGHUE CAROL		256 OSTEGO DR	FORT MYERS BEACH	FL	33931
10229290	MORRIS GEORGE S & ANNE R		159 COMPO RD S	WESTPORT	CT	6880
10229291	REDENIUS JOSHUA R		135 EUCALYPTUS CT	FORT MYERS BEACH	FL	33931
10229292	MCCULLOUGH J MORLEY &		661 TURTLE BAY BLVD	ENNISMORE	ON, CANADA	K0L 1T0
10229293	LTE 4060 LLC		2200 CR C W STE 2205	ROSEVILLE	MN	55113
10229294	118 VOORHIS INC		243 EASTCOURT RD	OAKVILLE	ON, CANADA	L6J 4Y5
10229295	BELGER RANDALL J &		7913 BUCCANEER DR	FORT MYERS BEACH	FL	33931
10229296	KAUTH DIANA TR		122 VOORHIS ST	FORT MYERS BEACH	FL	33931
10229297	LONG STEVE A & ANN M		110 ARROWHEAD CT	CARLISLE	KY	40311
10229299	WATERS KRISTIN		131 LONGFELLOW RD	WORCESTER	MA	1602
10229300	ELLIOTT KATHLEEN J TR		1401 ROCHESTER AVE	IOWA CITY	IA	52245
10229301	ALLISON ROBERT L &		3001 W WATERS AVE	TAMPA	FL	33614
10229302	BREEVES RD LLC		1923 W MUKILTEO BLVD	EVERETT	WA	98203



10229303	NASH ERNEST E & EVELYN M		270 KINGS RD	MADISON	NJ	7940
10229304	101 EUCALYPTUS LLC		102 CHRISTOPHER COLOMBUS DR #704	JERSEY CITY	NJ	7302
10229305	HUMBARD PAUL W & BRENDA K		1012 OAK RIDGE DR	RICHMOND	MO	64085
10229306	DAVIDSON KIM M TR		16 PLANTATION RD	LACONIA	NH	3246
10229307	LOFFRENO CHRISTIAN P		17916 GREY HERON CT	FORT MYERS BEACH	FL	33931
10229308	FORT MYERS BEACH FIRE CONTROL		PO BOX 2880	FORT MYERS BEACH	FL	33932
10229310	KENT PROPERTIES LLC		3226 HILLTOP RD	SPRINGFIELD	IL	62712
10229311	BRANN REGINALD & BEVERLY		5414 FALCON CREST DR	MACHESNEY PARK	IL	61115
10229312	CUSSON CHARLES E TR		110/112 VOORHIS ST	FORT MYERS BEACH	FL	33931
10229313	BOUGHER JEFFERY ALAN		411 WALNUT ST, 12086	GREEN COVE SPRINGS	FL	32043
10562199	LANGSTON JOHN D		814 EL DORADO PKWY E	CAPE CORAL	FL	33904
10229314	NIGH NICK E & KIMBERLY		7300 TOWNSHIP RD	FINDLAY	OH	45840
10229315	CANTLON KATHERINE T TR		131 MADISON CT	FORT MYERS BEACH	FL	33931
10229316	MAHONEY JAMES M TR		1437 WOODLYNNE BLVD	LINWOOD	NJ	8221
10229317	PETERSON TERRY		2639 PURSLANE DR	FORT MYERS	FL	33905
10229319	EMBARQ FLORIDA INC	PROPERTY TAX DEPT	1025 ELDORADO BLVD	BROOMFIELD	CO	80021
10229320	EMBARQ FLORIDA INC	PROPERTY TAX DEPT	1025 ELDORADO BLVD	BROOMFIELD	CO	80021
10229321	EMBARQ FLORIDA INC	PROPERTY TAX DEPT	1025 ELDORADO BLVD	BROOMFIELD	CO	80021
10229322	ORVIS ROBERT M & MARY H		116 EUCALYPTUS CT	FORT MYERS BEACH	FL	33931
10229323	EVANSON D M & SUE A		15830 LAKE CANDLEWOOD DR	FORT MYERS	FL	33908
10229324	COLOME REAL ESTATE LLC		3176 S CATHAY CIR	AURORA	CO	80013
10229344	HOURIGAN MARK J & ALISON H		3311 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10611404	PERSAUD PROPERTIES FL INVESTME		361 SEMINOLE WAY	FORT MYERS BEACH	FL	33931
10620629	SHELL MOUND PARK OWNERS ASSN		SHELL MOUND BLVD	FORT MYERS BEACH	FL	33931
10229486	CHAPELL GARY L +		17226 WRIGLEY CIR	FORT MYERS	FL	33908
10229487	COOKE FRANCES J TR		226 DONORA BLVD	FORT MYERS BEACH	FL	33931
10229488	JASIONOWSKI GAIL M TR		220 DONORA BLVD	FORT MYERS BEACH	FL	33931
10229489	MYERS FRANCES P TR		15861 PRENTISS POINTE #101	FORT MYERS	FL	33908
10611139	HENRIKSON CLINTON & TARA L		1090 NINE ROCK RD	SHERMAN	IL	62684
10611140	DJ AREND FARMS INC		15759 ROAD 138	PAULDING	OH	45879
10229491	VELDEN BROCK VANDER +		6081 TUSCOBIA TRAIL	MCFARLAND	WI	53558
10229492	ARASIMOWICZ EDWARD A + DEBRA M		3041 SHELL MOUND BLVD	FORT MYERS BEACH	FL	33931
10229493	ROJASFANK CORP		3235 NW 37TH ST	MIAMI	FL	33142
10229494	KROGMANN ALAN J +		1016 ROSEWOOD DR	MANCHESTER	IA	52057



10229495	PERRINO NICHOLAS J		5106 FAIRVIEW CT	AVON	IN	46123
10229496	PERRY ROBERT J		366 ANDREW CRES, PO BOX 1105	BELLE RIVER	ON, CANADA	N0R 1A0
10229497	BUCK HERBERT J & CONSTANCE		5405 JAEGER RD	NAPLES	FL	34109
10229500	RATCLIFF ROBERT D &		121 VOORHIS ST	FORT MYERS BEACH	FL	33931
10229501	STAROWICZ DANIEL		117 VOORHIS ST	FORT MYERS BEACH	FL	33931
10229502	VANCE HERBER G & NORMA L TR	ANGELA RUSSELL	5961 MINK ST	MOUNT VERNON	OH	43050
10229503	RUSSELL EDGAR E & ANGELA TR		386 VALDEZ AVE	GOLETA	CA	93117
10229504	MITCHELL MICHAEL &		2706 NW 41ST PL	CAPE CORAL	FL	33993
10229505	DAGNESE MICHAEL P		3046 SHELL MOUND BLVD	FORT MYERS BEACH	FL	33931
10229506	FORT MYERS BEACH ART ASSN INC		PO BOX 2359	FORT MYERS BEACH	FL	33932
10229507	FORT MYERS BEACH FIRE CONTROL		PO BOX 2880	FORT MYERS BEACH	FL	33932
10462856	GULF WESTWIND CONDO		13611 MCGREGOR BLVD STE 6	FORT MYERS	FL	33919
10588714	SUSAN A KOZIOL TRUST +		3104 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10611402	PERSAUD PROPERTIES FL INVESTME		361 SEMINOLE WAY	FORT MYERS BEACH	FL	33931
10611403	PERSAUD PROPERTIES FL INVESTME		361 SEMINOLE WAY	FORT MYERS BEACH	FL	33931
10229557	JELSMA EVERT J + SUSANNE H TR		1037 BARRINGTON NW	GRAND RAPIDS	MI	49534
10229558	TUTTLE MARY E TR		958 KENSINGTON NW	GRAND RAPIDS	MI	49534
10229559	CARPENTER WILLIAM &		14617 15TH AVE	FLUSHING	NY	11357
10229560	DIMARZO DOMINICK TR		7786 MARIE DR # 74	SHELBY TOWNSHIP	MI	48316
10229561	DAVIDSON KIM M TR		16 PLANTATION ROAD	LACONIA	NH	3246
10229562	SMITS RONALD L + RACHEL A		3777 MIGHTY OAK TRL	GREEN BAY	WI	54313
10229563	COLE LISA D TR		3045 ESTERO BLVD #2C	FORT MYERS BEACH	FL	33931
10229564	SMITS RONALD L & RACHEL A		1000 MAIN ST	GREEN BAY	WI	54301
10229565	JACKSON FRANK A &		1031 NATIONAL RD	WHEELING	WV	26003
10229566	GILLESPIE JAMES R		1060 SIR FRANCIS CT	GALLATIN	TN	37066
10229567	JACKSON FRANK A &		1031 NATIONAL RD	WHEELING	WV	26003
10229568	ALBINO GLORIA M TR		3045 ESTERO BLVD #3D	FORT MYERS BEACH	FL	33931
10229569	MCINTOSH PATRICIA T		3045 ESTERO BLVD #4A	FORT MYERS BEACH	FL	33931
10229570	PAOLONI ROBERT J		7472 FERGUSON RD	KENT	OH	44240
10229571	FLAHERTY TRUST		52 GREENBRIAR DR	BERKELEY HEIGHTS	NJ	7922
10229572	WOLLESEN TIMOTHY H TR		15560 S KEELER ST	OLATHE	KS	66062
10229573	SHOFF SUSAN TR		3045 ESTERO BLVD UNIT 5C	FORT MYERS BEACH	FL	33931
10229574	TARULLI SYBIL		1745 WASHINGTON VALLEY RD	MARTINSVILLE	NJ	8836
10229575	SHOFF SUSAN TR		3045 ESTERO BLVD #5C	FORT MYERS BEACH	FL	33931



10229576	FLORENCE ROBERT W & KAREN L		3045 ESTERO BLVD #5D	FORT MYERS BEACH	FL	33931
10229577	BARTLETT ECHO L		6495 FAIRWAY BLVD S	SAINT PETERSBURG	FL	33707
10229578	DAZET ELLEN C +		84 FOUL RIFT RD	BELVIDERE	NJ	7823
10229579	RATH CHARLES J + LINDA M		1013 STRRUP LN	LEMONT	IL	60439
10229580	KUBIK KENNETH & VIRGINIA		489 MILLBROOK AV	RANDOLPH	NJ	7869
10229581	DKA LLC		3428 JOHNSON RD	MARNE	MI	49435
10229582	CORDES RONALD C TR		7305 BAUMHOFF AVE NW	GRAND RAPIDS	MI	49544
10229583	HENRY RICHARD MOTUELLE TRUST +		2210 N EAST SHAFER DR	MONTICELLO	IN	47960
10229584	DAVIS PAUL M & MARY E TR		15290 BALLAST POINT DR #5121	FORT MYERS	FL	33908
10229585	C + T MANAGEMENT LLC		2216 KINNROW AV NW	GRAND RAPIDS	MI	49534
10229586	CLARK SARAH		260 MCGINLEY RD	CHICORA	PA	16025
10229587	GARLAND JONATHAN B &		30 KENDAL AVE	TORONTO	ON, CANADA	M5R 1L7
10229588	PFAFF JANET P TR		275 SAXONY DR	CRESTVIEW HILLS	KY	41017
10229589	DRAKE OWNERS INC		PO BOX 2652	FORT MYERS BEACH	FL	33932
10229590	MOTUELLE HENRY R TR		2210 N EAST SHAFER DR	MONTICELLO	IN	47960
10229591	KELLEY JASON		11881 OAKLAND DR	BOKEELIA	FL	33922
10229592	RIDDLE DANIL K & JANE N		112 N HARBOR DR	GRAND HAVEN	MI	49417
10588712	GREENVILLE WAREHOUSING LLC		5917 US RT 36	GREENVILLE	OH	45331
10588713	MELISSA MARIE LUNGARETTI TRUST		3104 ESTERO BLVD	FORT MYERS BEACH	FL	33931



10229576	FLORENCE ROBERT W & KAREN L		3045 ESTERO BLVD #5D	FORT MYERS BEACH	FL	33931
10229577	BARTLETT ECHO L		6495 FAIRWAY BLVD S	SAINT PETERSBURG	FL	33707
10229578	DAZET ELLEN C +		84 FOUL RIFT RD	BELVIDERE	NJ	7823
10229579	RATH CHARLES J + LINDA M		1013 STRRUP LN	LEMONT	IL	60439
10229580	KUBIK KENNETH & VIRGINIA		489 MILLBROOK AV	RANDOLPH	NJ	7869
10229581	DKA LLC		3428 JOHNSON RD	MARNE	MI	49435
10229582	CORDES RONALD C TR		7305 BAUMHOFF AVE NW	GRAND RAPIDS	MI	49544
10229583	HENRY RICHARD MOTUELLE TRUST +		2210 N EAST SHAFER DR	MONTICELLO	IN	47960
10229584	DAVIS PAUL M & MARY E TR		15290 BALLAST POINT DR #5121	FORT MYERS	FL	33908
10229585	C + T MANAGEMENT LLC		2216 KINNROW AV NW	GRAND RAPIDS	MI	49534
10229586	CLARK SARAH		260 MCGINLEY RD	CHICORA	PA	16025
10229587	GARLAND JONATHAN B &		30 KENDAL AVE	TORONTO	ON, CANADA	M5R 1L7
10229588	PFAFF JANET P TR		275 SAXONY DR	CRESTVIEW HILLS	KY	41017
10229589	DRAKE OWNERS INC		PO BOX 2652	FORT MYERS BEACH	FL	33932
10229590	MOTUELLE HENRY R TR		2210 N EAST SHAFER DR	MONTICELLO	IN	47960
10229591	KELLEY JASON		11881 OAKLAND DR	BOKEELIA	FL	33922
10229592	RIDDLE DANIL K & JANE N		112 N HARBOR DR	GRAND HAVEN	MI	49417
10588712	GREENVILLE WAREHOUSING LLC		5917 US RT 36	GREENVILLE	OH	45331
10588713	MELISSA MARIE LUNGARETTI TRUST		3104 ESTERO BLVD	FORT MYERS BEACH	FL	33931

PAN-O-GOLD BLACK HILLS CO
444 E SAINT GERMAIN ST
SAINT CLOUD MN 56304

SAND CASTLE COTTAGES LLC
6541 WINKLER RD
FORT MYERS FL 33919

HOFFMAN ELIOT B &
3250 ESTERO BLVD
FORT MYERS BEACH FL 33931

EUCALYPTUS PARK
KATHERN CANTLON
131 MADISON CT
FORT MYERS BEACH FL 33931

PIERATT KIMBERLY NICOLE
4201 N OCEAN DR #607
HOLLYWOOD FL 33019

DAR LAND HOLDINGS LLC
3487 COUNTY LINE RD
LUXEMBURG WI 54217

ESTERO 3 LLC
5359 N RD 400 W
BARGERSVILLE IN 46106

PLANTZ RONALD A
1033 S BUTTERNUT CIR
FRANKFORT IL 60423

PERSAUD PROPERTIES FL
385 SEMINOLE WAY
FORT MYERS BEACH FL 33931

RED COCONUT RV PARK LLP
PO BOX 990
ESTERO FL 33929

KHAN VANESSA
1721 NE 12TH ST
CAPE CORAL FL 33909

DODD FELIX C III &
1906 GLEN ECHO RD STE 150402
NASHVILLE TN 37215

TROPICAL SHORES WAY LLC
293 GRACE POINTE CT
WAYZATA MN 55391

CONTE STACEY
136 EUCALYPTUS CT
FORT MYERS BEACH FL 33931

DONOGHUE CAROL
256 OSTEGO DR
FORT MYERS BEACH FL 33931

MORRIS GEORGE S & ANNE R
159 COMPO RD S
WESTPORT CT 06880

REDENIUS JOSHUA R
135 EUCALYPTUS CT
FORT MYERS BEACH FL 33931

MCCULLOUGH J MORLEY &
661 TURTLE BAY BLVD
ENNISMORE ON K0L 1T0
CANADA

LTE 4060 LLC
2200 CR C W STE 2205
ROSEVILLE MN 55113

118 VOORHIS INC
243 EASTCOURT RD
OAKVILLE ON L6J 4Y5
CANADA

BELGER RANDALL J &
7913 BUCCANEER DR
FORT MYERS BEACH FL 33931

KAUTH DIANA TR
122 VOORHIS ST
FORT MYERS BEACH FL 33931

LONG STEVE A & ANN M
110 ARROWHEAD CT
CARLISLE KY 40311

WATERS KRISTIN
131 LONGFELLOW RD
WORCESTER MA 01602

ELLIOTT KATHLEEN J TR
1401 ROCHESTER AVE
IOWA CITY IA 52245

ALLISON ROBERT L &
3001 W WATERS AVE
TAMPA FL 33614

BREEVES RD LLC
1923 W MUKILTEO BLVD
EVERETT WA 98203

NASH ERNEST E & EVELYN M
270 KINGS RD
MADISON NJ 07940

101 EUCALYPTUS LLC
102 CHRISTOPHER COLOMBUS DR #704
JERSEY CITY NJ 07302

HUMBARD PAUL W & BRENDA K
1012 OAK RIDGE DR
RICHMOND MO 64085

DAVIDSON KIM M TR
16 PLANTATION RD
LACONIA NH 03246

LOFFRENO CHRISTIAN P
17916 GREY HERON CT
FORT MYERS BEACH FL 33931

FORT MYERS BEACH FIRE CONTROL
PO BOX 2880
FORT MYERS BEACH FL 33932

KENT PROPERTIES LLC
3226 HILLTOP RD
SPRINGFIELD IL 62712

BRANN REGINALD & BEVERLY
5414 FALCON CREST DR
MACHESNEY PARK IL 61115

CUSSON CHARLES E TR
110/112 VOORHIS ST
FORT MYERS BEACH FL 33931

BOUGHER JEFFERY ALAN
411 WALNUT ST 12086
GREEN COVE SPRINGS FL 32043

LANGSTON JOHN D
814 EL DORADO PKWY E
CAPE CORAL FL 33904

NIGH NICK E & KIMBERLY
7300 TOWNSHIP RD
FINDLAY OH 45840

CANTLON KATHERINE T TR
131 MADISON CT
FORT MYERS BEACH FL 33931

MAHONEY JAMES M TR
1437 WOODLYNNE BLVD
LINWOOD NJ 08221

PETERSON TERRY
2639 PURSLANE DR
FORT MYERS FL 33905

EMBARQ FLORIDA INC
PROPERTY TAX DEPT
1025 ELDORADO BLVD
BROOMFIELD CO 80021

EMBARQ FLORIDA INC
PROPERTY TAX DEPT
1025 ELDORADO BLVD
BROOMFIELD CO 80021

EMBARQ FLORIDA INC
PROPERTY TAX DEPT
1025 ELDORADO BLVD
BROOMFIELD CO 80021

ORVIS ROBERT M & MARY H
116 EUCALYPTUS CT
FORT MYERS BEACH FL 33931

EVANSON D M & SUE A
15830 LAKE CANDLEWOOD DR
FORT MYERS FL 33908

COLOME REAL ESTATE LLC
3176 S CATHAY CIR
AURORA CO 80013

HOURIGAN MARK J & ALISON H
3311 ESTERO BLVD
FORT MYERS BEACH FL 33931

PERSAUD PROPERTIES FL INVESTME
361 SEMINOLE WAY
FORT MYERS BEACH FL 33931

SHELL MOUND PARK OWNERS ASSN
SHELL MOUND BLVD
FORT MYERS BEACH FL 33931

CHAPPELL GARY L +
17226 WRIGLEY CIR
FORT MYERS FL 33908

COOKE FRANCES J TR
226 DONORA BLVD
FORT MYERS BEACH FL 33931

JASIONOWSKI GAIL M TR
220 DONORA BLVD
FORT MYERS BEACH FL 33931

MYERS FRANCES P TR
15861 PRENTISS POINTE #101
FORT MYERS FL 33908

HENRIKSON CLINTON & TARA L
1090 NINE ROCK RD
SHERMAN IL 62684

DJ AREND FARMS INC
15759 ROAD 138
PAULDING OH 45879

VELDEN BROCK VANDER +
6081 TUSCOBIA TRAIL
MCFARLAND WI 53558

ARASIMOWICZ EDWARD A + DEBRA M
3041 SHELL MOUND BLVD
FORT MYERS BEACH FL 33931

ROJASFANK CORP
3235 NW 37TH ST
MIAMI FL 33142

KROGMANN ALAN J +
1016 ROSEWOOD DR
MANCHESTER IA 52057

PERRINO NICHOLAS J
5106 FAIRVIEW CT
AVON IN 46123

PERRY ROBERT J
366 ANDREW CRES
PO BOX 1105
BELLE RIVER ON N0R 1A0
CANADA

BUCK HERBERT J & CONSTANCE
5405 JAEGER RD
NAPLES FL 34109

RATCLIFF ROBERT D &
121 VOORHIS ST
FORT MYERS BEACH FL 33931

STAROWICZ DANIEL
117 VOORHIS ST
FORT MYERS BEACH FL 33931

VANCE HERBER G & NORMA L TR
ANGELA RUSSELL
5961 MINK ST
MOUNT VERNON OH 43050

RUSSELL EDGAR E & ANGELA TR
386 VALDEZ AVE
GOLETA CA 93117

MITCHELL MICHAEL &
2706 NW 41ST PL
CAPE CORAL FL 33993

DAGNESE MICHAEL P
3046 SHELL MOUND BLVD
FORT MYERS BEACH FL 33931

FORT MYERS BEACH ART ASSN INC
PO BOX 2359
FORT MYERS BEACH FL 33932

FORT MYERS BEACH FIRE CONTROL
PO BOX 2880
FORT MYERS BEACH FL 33932

GULF WESTWIND CONDO
13611 MCGREGOR BLVD STE 6
FORT MYERS FL 33919

SUSAN A KOZIOL TRUST +
3104 ESTERO BLVD
FORT MYERS BEACH FL 33931

PERSAUD PROPERTIES FL INVESTME
361 SEMINOLE WAY
FORT MYERS BEACH FL 33931

PERSAUD PROPERTIES FL INVESTME
361 SEMINOLE WAY
FORT MYERS BEACH FL 33931

JELSMA EVERT J + SUSANNE H TR
1037 BARRINGTON NW
GRAND RAPIDS MI 49534

TUTTLE MARY E TR
958 KENSINGTON NW
GRAND RAPIDS MI 49534

CARPENTER WILLIAM &
14617 15TH AVE
FLUSHING NY 11357

DIMARZO DOMINICK TR
7786 MARIE DR # 74
SHELBY TOWNSHIP MI 48316

DAVIDSON KIM M TR
16 PLANTATION ROAD
LACONIA NH 03246

SMITS RONALD L + RACHEL A
3777 MIGHTY OAK TRL
GREEN BAY WI 54313

COLE LISA D TR
3045 ESTERO BLVD #2C
FORT MYERS BEACH FL 33931

SMITS RONALD L & RACHEL A
1000 MAIN ST
GREEN BAY WI 54301

JACKSON FRANK A &
1031 NATIONAL RD
WHEELING WV 26003

GILLESPIE JAMES R
1060 SIR FRANCIS CT
GALLATIN TN 37066

JACKSON FRANK A &
1031 NATIONAL RD
WHEELING WV 26003

ALBINO GLORIA M TR
3045 ESTERO BLVD #3D
FORT MYERS BEACH FL 33931

MCINTOSH PATRICIA T
3045 ESTERO BLVD #4A
FORT MYERS BEACH FL 33931

PAOLONI ROBERT J
7472 FERGUSON RD
KENT OH 44240

FLAHERTY TRUST
52 GREENBRIAR DR
BERKELEY HEIGHTS NJ 07922

WOLLESEN TIMOTHY H TR
15560 S KEELER ST
OLATHE KS 66062

SHOFF SUSAN TR
3045 ESTERO BLVD UNIT 5C
FORT MYERS BEACH FL 33931

TARULLI SYBIL
1745 WASHINGTON VALLEY RD
MARTINSVILLE NJ 08836

SHOFF SUSAN TR
3045 ESTERO BLVD #5C
FORT MYERS BEACH FL 33931

FLORENCE ROBERT W & KAREN L
3045 ESTERO BLVD #5D
FORT MYERS BEACH FL 33931

BARTLETT ECHO L
6495 FAIRWAY BLVD S
SAINT PETERSBURG FL 33707

DAZET ELLEN C +
84 FOUL RIFT RD
BELVIDERE NJ 07823

RATH CHARLES J + LINDA M
1013 STRRUP LN
LEMONT IL 60439

KUBIK KENNETH & VIRGINIA
489 MILLBROOK AV
RANDOLPH NJ 07869

DKA LLC
3428 JOHNSON RD
MARNE MI 49435

CORDES RONALD C TR
7305 BAUMHOFF AVE NW
GRAND RAPIDS MI 49544

HENRY RICHARD MOTUELLE TRUST +
2210 N EAST SHAFER DR
MONTICELLO IN 47960

DAVIS PAUL M & MARY E TR
15290 BALLAST POINT DR #5121
FORT MYERS FL 33908

C + T MANAGEMENT LLC
2216 KINNROW AV NW
GRAND RAPIDS MI 49534

CLARK SARAH
260 MCGINLEY RD
CHICORA PA 16025

GARLAND JONATHAN B &
30 KENDAL AVE
TORONTO ON M5R 1L7
CANADA

PFAFF JANET P TR
275 SAXONY DR
CRESTVIEW HILLS KY 41017

DRAKE OWNERS INC
PO BOX 2652
FORT MYERS BEACH FL 33932

MOTUELLE HENRY R TR
2210 N EAST SHAFER DR
MONTICELLO IN 47960

KELLEY JASON
11881 OAKLAND DR
BOKEELIA FL 33922

RIDDLE DANIL K & JANE N
112 N HARBOR DR
GRAND HAVEN MI 49417

GREENVILLE WAREHOUSING LLC
5917 US RT 36
GREENVILLE OH 45331

MELISSA MARIE LUNGARETTI TRUST
3104 ESTERO BLVD
FORT MYERS BEACH FL 33931



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 Local Planning Agency/ 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 be sure to visit our website at WWW.FMBGOV.COM to check for any updates or changes regarding the upcoming meeting.

TIME: 9 AM

DATE: LPA February 27, 2024, 1st Town Council March 18, 2024, 2nd Town Council April 1, 2024

CASE: DCI20230194

ADDRESS: 3051 Estero Blvd

APPLICANT: The Neighborhood Company

REQUEST: Request to rezone Commercial Boulevard to Commercial Planned Development for redevelopment of a convenience store.

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 **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/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
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ 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 be sure to visit our website at WWW.FMBGOV.COM to check for any updates or changes regarding the upcoming meeting.

TIME: 9 AM

DATE: LPA February 27, 2024, 1st Town Council March 18, 2024, 2nd Town Council April 1, 2024

CASE: DCI20230194

ADDRESS: 3051 Estero Blvd

APPLICANT: The Neighborhood Company

REQUEST: Request to rezone Commercial Boulevard to Commercial Planned Development for redevelopment of a convenience store.

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 **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/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
2525 Estero Blvd,
Fort Myers Beach, FL 33931

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Town of Fort Myers Beach
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Fort Myers Beach, FL 33931

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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»



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the [City's/Town's/Village's] website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance 24-05 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 3051 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 29-46-24-W1-0120C.0100 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the [City/Town/Village] is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the [City/Town/Village] is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or

¹ See Section 166.041(4)(c), Florida Statutes.

- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the [City/Town/Village] hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends the existing zoning on 3051 Estero Blvd (STRAP NUMBERS 29-46-24-W1-0120C.0100) to allow the redevelopment of a convenience store with gas pumps.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the [City/Town/Village], including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the [City's/Town's/Village's] regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 24-05

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

Only one business, the one that applied for the rezoning.

4. Additional information the governing body deems useful (if any):

N/A

1. **Request:**

Meeting Date: March 18, 2024

First Reading and Public Hearing of and Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA GRANTING TO PEOPLES GAS SYSTEM, INC., ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE TOWN OF FORT MYERS BEACH FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; PROVIDING FOR FINDINGS; SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on April 1, 2024 at 9:00 AM

Why the action is necessary:

Since the original franchise agreement with Peoples Gas has expired, it is necessary to renew the franchise agreement to provide continued access to the town's right-of-ways to maintain a natural gas distribution system.

What the action accomplishes:

If approved, the new franchise agreement will increase the franchise fee rate from 5% to 6% and will increase the insurance coverage per occurrence from \$1,000,000 to \$2,000,000, and will extend the agreement for 30 years

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Andy Hyatt, Town Manager, Joe Onzick, Finance Director

5. **Background:**

This ordinance accomplishes the renewal of the Peoples Gas Franchise agreement that was originally granted in January of 2001 for a 20-year period with a franchise fee rate of 5%. This new franchise agreement will be for 30-year period with a franchise fee rate of 6%. The new agreement also increases the insurance coverage from \$1,000,000 per occurrence to \$2,000,000 per occurrence. The agreement grants limited access to the town's right-of-ways to maintain a natural gas distribution system.

Attachments:

1. Final 2024 Franchise Ordinance (1)

Financial Impact:

Pre-Hurricane Ian, annual franchise fee revenue was \$15,000 based on a franchise fee rate of 5%. Using that as the baseline, the increased franchise fee rate of 6% may yield annual revenue of \$18,000, depending on how many homes and businesses come back online, as well the amount of actual revenue generated by the company.

6. **Alternative Action**

7. **Management Recommendations:**

Recommend approval of the agreement

8. **Recommended Approval:**

Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/13/2024
Approved - 3/13/2024
Approved - 3/13/2024
Final Approval - 3/13/2024

ORDINANCE NO. 24-07

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA GRANTING TO PEOPLES GAS SYSTEM, INC., ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE TOWN OF FORT MYERS BEACH FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; PROVIDING FOR FINDINGS; SEVERABILITY, AND PROVIDING 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, the Town and Peoples Gas System entered into a franchise agreement in 2001, which expired in 2021; and

WHEREAS, although the parties were unable to agree to the terms of a proposed franchise agreement in 2021, Peoples Gas System and the Town now desire to enter into a franchise agreement for a period of thirty (30) years commencing from the date provided herein; and

WHEREAS, on the 18th day of March, 2024, the Town Council held a first reading of an Ordinance, gave full and complete consideration to the request of a proposed ordinance containing the terms and conditions of a franchise agreement with People's Gas System, and provided an opportunity for public comment; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town's website on the ____ day of _____, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the _____ on the ____ day of _____, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the 1st day of April, 2024, the Town Council held a second reading of the Ordinance and provided an opportunity for public comment; and

WHEREAS, the Town Council determined by a vote of ____ to ____ that it is in the public interest to enter into a new franchise agreement with Peoples Gas System for the health, safety and welfare of the town.

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

SECTION 1. That the above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the town council.

SECTION 2. DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meanings given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the Town.
- B. "Town" shall mean the Town of Fort Myers Beach, Lee County, Florida, its successors and assigns.
- C. "Company" shall mean Peoples Gas System, Inc., a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the Town.
- E. "Effective Date" shall mean the date this Franchise becomes effective as described in Section 19 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement as passed and adopted by the Town and accepted by the Company as provided in Section 19 below.
- G. "FPSC" shall mean the Florida Public Service Council or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale of Gas.
- I. "Natural Gas" or "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the

Customer's premises. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").

J. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.

K. "Right-of-way" means any Town street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place, or other right-of-way that is owned or under the control of the Town.

SECTION 3: GRANT

The Town hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Town Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the Town, or in such territory as may be hereafter added or annexed to, or consolidated with the Town, a Distribution System subject to the terms and conditions herein contained.

SECTION 4: TERM

Except as provided in Section 15, the Franchise hereby granted shall be for a period of thirty (30) years from the Effective Date of this ordinance.

SECTION 5: ASSIGNMENT

A. The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the Town, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the Town.

B. Notwithstanding the foregoing, the Company may, without the consent of the Town, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a

corporation engaged in similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 6: TOWN COVENANT

As a further consideration for this Franchise Agreement, the Town covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the Town, as modified, during the term of this Franchise Agreement.

SECTION 7: USE OF TOWN STREETS

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Town's Rights-of-way, and said Right-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the Town. The Town shall issue or, if applicable, deny permits within ten (10) business days of application by the Company. In consideration of the franchise fees contemplated in this Franchise Agreement, the Town shall not charge the Company any fees for the issuance of such permits. The Company shall, with due diligence and dispatch, place such Right-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the Town, to restore such Right-of-way, then the Town may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the Town has passed or might pass in the future, in the exercise of its police power, provided, however, that the Town shall not pass any ordinance or regulation that results in a material change to the rights or obligations of the Company under the Franchise Agreement.

SECTION 8: MAINTENANCE

All such components of the Distribution System of the Company located within the Town shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

SECTION 9: LAYING OF PIPE

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in Town permits.

SECTION 10: CONSTRUCTION WORK

The Town reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the Town in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the Town to remove, relocate, or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation, or disconnection shall be made by the Company

as ordered in writing by the Town without claim for reimbursement. If the Town shall require the Company to remove, relocate, or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System to enable any other Person to use said Rights-of-way of the Town, as part of its permitting or approval process, the Town shall require the Person desiring or occasioning such removal, relocation, disconnection, or alteration to reimburse the Company for any loss, cost, or expense caused by or arising out of such removal, relocation, disconnection, or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally or negligently interfere with, change, or injure any water pipes, drains, or sewers of said Town unless it has provided reasonable notice to the Town and has received specific permission from the Town or its duly authorized representative to engage in specific work.

SECTION 11: FRANCHISE FEE

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the Effective Date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors, or assigns, shall pay to the Town or its successors, a sum of money equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale, transportation and delivery of Natural Gas to Customers within the corporate limits of the Town. The Franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

SECTION 12: IDENTIFICATION OF TOWN RESIDENTS

No less than thirty (30) days prior to the Effective Date, the Town shall deliver to the Company such information (including Town limit streets and block numbers) as is needed by the

Company to determine which of its customer are located within the Town. The Town shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether by annexation, deannexation or consolidation, or upon the Company's request. Company shall be relieved from the obligation to pay franchise fees for those customers if the Town's failure to provide information under this Section has resulted in the Company's inability to collect such fees.

SECTION 13: ACCOUNTS AND RECORDS

The Company shall maintain accounting, maintenance, and construction records as prescribed by the Florida Public Service Commission. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the Town are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the Town, or its designated representative, and execution of a confidentiality agreement consistent with Florida public records law and reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the Town for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the Florida Public Service Commission and any examination conducted after such period shall be confined to the billing records then available in accordance with Florida law.

SECTION 14: INSURANCE

During the term of this Franchise, the Company shall file with the Town Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance, the terms

and conditions whereof shall provide that the Town of Fort Myers Beach is an additional insured as to the Company's negligent operation of a Natural Gas distribution system within the corporate limits of the Town as they currently exist or may exist in the future. Each such policy shall provide for the minimum sum of \$2,000,000.00 for injury or death to any one person, and for the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one incident or accident, and for the minimum sum of \$2,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Franchise Agreement. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Company shall notify the Clerk of the Town in writing, promptly upon any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 15: INDEMNIFICATION:

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the Town, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the Town during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses, and liabilities incurred by the Town in connection with any such claim, suit, or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a

result thereof; provided, however, that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the Town, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement.

SECTION 16: TERMINATION BY TOWN

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the Town to declare a termination of this Franchise Agreement; provided, however, that before such action by the Town shall become operative and effective, the Company shall have been served by the Town with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the Town with respect thereto, and the Company shall have had a period of sixty (60) days after service by certified U.S. mail of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, then sixty (60) days to present a plan reasonably satisfactory to the Town to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 17: CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the Town and the Company.

SECTION 18: SEVERABILITY; CHANGE IN LAW

(A) If any section, part of a section, paragraph, sentence, or clause of this Franchise Agreement shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the Town, or any other governmental or regulatory body of a law, rule, regulation, or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or Town may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 19: GOVERNING LAW

This Franchise shall be governed by the laws of the State of Florida and applicable federal law.

SECTION 20: EFFECTIVE DATE

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the Town's passage and adoption hereof.

SECTION 21.

That the town council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Land Development Code, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

SECTION 22.

Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance, this ordinance shall prevail and be controlling.

SECTION 23.

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 24.

This Ordinance shall become effective upon adoption by the Town Council.

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

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Karen Woodson, Council Member	_____
Scott Stafford, Council Member	_____

ADOPTED this ____ day of _____, 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, Town Attorney

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

1. **Request:**

Meeting Date: March 18, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION AMENDMENT SEZ20230052, REQUESTING A SIX-MONTH REASSESSMENT OF PREVIOUSLY APPROVED AMENDMENTS TO ALLOW FOR OUTDOOR ALCOHOL SALES AND LIVE MUSIC; 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 resolution conditions state that the resolution is temporary, for six months. The LPA may recommend to the Town Council an updated resolution to allow the COP to continue or may recommend changes or denial of the use.

What the action accomplishes:

Will direct staff to amend the resolution or allow the special exception to terminate.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

Resolution 23-80 amended Resolution 13-09 for Consumption on Premises for The Whale Restaurant and Bar. The amendment allowed for consumption on premises outside the building and allowed for amplified and live music outdoors, not including drums. Condition B requires that the amendment be temporary, for a period of six months or until construction begins, whichever happens first. This hearing is the six-month review of the resolution to determine if it should be allowed to remain in effect, be amended, or be terminated.

Attachments:

1. 24-35, SEZ20230052 The Whale 6 month review
2. Council Staff Report
3. SEZ Resolution 23-80
4. 1249 Estero blvd- SEZ20230052 Postcards (002)

Financial Impact:

unknown

6. **Alternative Action**

7. **Management Recommendations:**

Advise staff to amend the resolution to allow the use to continue.

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator/Planner 1
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 3/7/2024
Approved - 3/7/2024
Approved - 3/7/2024
Approved - 3/11/2024

RESOLUTION NUMBER 24-35

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION AMENDMENT SEZ20230052, REQUESTING A SIX-MONTH REASSESSEMENT OF PREVIOUSLY APPROVED AMENDMENTS TO ALLOW FOR OUTDOOR ALCOHOL SALES AND LIVE MUSIC; 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, 1249 Estero Adventures LLC, owners of the property situated at 1249 Estero Boulevard, is requesting a six-month reassessment of previously approved amendments to allow for outdoor alcohol sales and live music; 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 February 27, 2024, 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 found that the request is/ is not consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval/ approval with conditions/ denial of the variance; and

WHEREAS, on March 18, 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 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 a request for variance from LDC 34-638(d)(1)g. which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths.

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.

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 _____ 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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 18th day of March 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, Town Attorney

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



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Special Exception Amendment

CASE NUMBER: SEZ—Amendment, 20230052

CASE NAME: 1249 Estero Blvd, 6 month reassessment of previously approved amendments to applicant's request to allow for outdoor alcohol sales and live music.

**COUNCIL
HEARING DATE:** March 18, 2024 at 9.00 AM

**STAFF
RECOMMENDATION:** N/A

**PREPARED/
SUBMITTED BY:** Jason Smalley/ Sarah Propst, AICP, PMP

LPA OUTCOME

The discussion at LPA largely dealt with the question of noise and whether the applicant's business had adequately developed a process to meet the conditions of approval placed on the Special Exception by Council. LPA heard from neighbors, patrons and staff from the Whale and determined that there was enough evidence that the restaurant was abiding by its responsibility to mitigate –to the greatest extent possible—noise nuisance.

By a vote of 6-0 and one refusal, the LPA has recommended approval with conditions of the applicant's Special Exception.

I. APPLICATION SUMMARY

Applicant/Owner: Greg von Krumreig

Request: The applicant is to address whether the new conditions of approval allowing for outdoor sales of alcohol and live music on their site has negatively affected neighbors and whether the allowances should continue.

Subject property: See attached site plan

Physical Address: 1249 Estero Blvd.

STRAP #: 19-46-24-W4-0060H.0300

FLU: Pedestrian Commercial

Zoning: Downtown

Adjacent zoning and land uses:

North:	Downtown Residential Structure
South:	Downtown Demolished Commercial Lot
East:	Downtown Demolished Commercial Lot
West:	Downtown Demolished Commercial Lot

II. BACKGROUND AND ANALYSIS

Background:

On August 7th, 2023 the Town Council approved an amendment to the applicant's conditions of approval, allowing for Consumption on Premises outside of a building as well as outdoor music with time limitations (res. 23-80). Part of the amended conditions of approval was that the applicant shall come back after 6 months to discuss with Council whether the measures taken to ensure that the live music hadn't become a nuisance to surrounding neighbors.

In 2013 Resolution 13-09 was approved which allowed for outdoor consumption of alcohol on premises on a newly constructed front deck.

As part of the Special Exception approval nine (9) conditions were applied. Conditions #1 states, Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and proposed new lower outdoor deck..., and #3 states, "No live music is permitted. Outdoor televisions shall be limited to [sic] from 11:00 AM to 11:00 PM daily."

While no longer in effect, the record does include a document which preceded approval of Resolution 13-09. The previous document was a Special Permit approved

by Lee County (Case# 93-12-23-SP-01) in 1993 which approved outdoor seating on the upper deck of the restaurant with seven (7) "Conditions" including #2 which stated, "The special permit shall be limited to the 48-foot by 40-foot deck located on the roof of the existing restaurant...", and #4 which stated, "There shall be no entertainment on the deck; however, recorded background music (excluding rap, hard rock and heavy metal music) will be allowed;"

Neighborhood Compatibility:

In review of the aerial photography of the surrounding area, staff noted that the property is situated among single-family housing to the North, with largely empty commercial lots to the East, South and West. Based on Lee Property Appraiser's (LEEPA) online GIS tools, the Whale's lot sits directly adjacent to the residential lot to the North and is approximately 20-feet, 60-feet and 60-feet to the West, South and East commercial lots, respectively.

III. CONDITIONS OF APPROVAL

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.

Staff Report Exhibits:

A – Res. 23-80 (2023)

RESOLUTION NUMBER 23-80

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING 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/ 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 amendment do/ do not meet the requirements of the Town Comprehensive Plan and LDC, and approving/ approving with conditions/ denying 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/ APPROVES WITH CONDITIONS/ DENIES the amendment of Res. 13-09.

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 34-88 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 only acoustic music is allowed as long as the other conditions of approval are upheld.

E. Amplified music is allowed on 1249 Estero Blvd. until 9:00pm Friday and Saturday, after which only acoustic music is allowed 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 _____ 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	_____
Bill Veach	_____
Karen Woodson	_____

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, 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 August 2023.



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 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 be sure to visit our website at WWW.FMBGOV.com to check for any updates or changes regarding the upcoming meeting.

TIME: 9 AM

DATE: LPA February 27, 2024, and Town Council March 18, 2024

CASE: SEZ20230052

ADDRESS: 1249 Estero Blvd

NOTICE: A 6-month review of special exception SEZ20230052 RES 23-80. 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..

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 **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/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
2525 Estero Blvd,
Fort Myers Beach, FL 33931

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TIME: 9 AM

DATE: LPA February 27, 2024, and Town Council March 18, 2024

CASE: SEZ20230052

ADDRESS: 1249 Estero Blvd

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TIME: 9 AM

DATE: LPA February 27, 2024, and Town Council March 18, 2024

CASE: SEZ20230052

ADDRESS: 1249 Estero Blvd

NOTICE: A 6-month review of special exception SEZ20230052 RES 23-80. 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..

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 **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

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TIME: 9 AM

DATE: LPA February 27, 2024, and Town Council March 18, 2024

CASE: SEZ20230052

ADDRESS: 1249 Estero Blvd

NOTICE: A 6-month review of special exception SEZ20230052 RES 23-80. 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..

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 **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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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. **Request:**

Meeting Date: March 18, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20230280 TO ALLOW RECONSTRUCTION OF A POOL, POOL DECK, FENCES AND WALLS, GRILL AREA, FOOT-RINSE STATION, LIGHTING, AND BEACH ACCESS PATH IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 102 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

Reconstruction of major accessory structure in the EC zoning district require a special exception approval. The LPA hears special exceptions and makes recommendations to the Town Council.

What the action accomplishes:

Approval of the SEZ allows reconstruction and repair to pool and beach amenities in the EC zoning district.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The applicant is proposing the repair/reconstruction of a pool, pool deck, fences and walls, grill area, foot-rinse station, lighting, and beach access path which is sand with pavers to the foot-rinse station. These pool and beach amenities are partially or fully within the Environmentally Critical (EC) zoning district, seaward of the Coastal Construction Control Line (CCCL). All of these features are part of the common element for the Pink Shell Vacation Villas and were in existence in approximately the proposed locations, prior to the establishment of the 1978 CCCL.

Attachments:

1. Resolution 24-42
2. Staff Report
3. Exhibit A - Complete Application
4. Exhibit B - Survey
5. Exhibit C - Owner Acknowledgements
6. Exhibit C - LPA AND TC postcard 102 Estero Blvd Pink Shell Vacation Villas

Financial Impact:

Unknown

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Approve with conditions

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator/Planner 1
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/6/2024
Approved - 3/6/2024
Approved - 3/11/2024
Approved - 3/11/2024
Final Approval - 3/11/2024

RESOLUTION NUMBER 24-42

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20230280 TO ALLOW RECONSTRUCTION OF A POOL, POOL DECK, FENCES AND WALLS, GRILL AREA, FOOT-RINSE STATION, LIGHTING, AND BEACH ACCESS PATH IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 102 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND 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 Pink Shell Vacation Villas is requesting a special exception for the reconstruction of major accessory structures that were destroyed during hurricane Ian, including a pool deck, walkways, and a fence in the Environmentally Critical zoning district; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W1-02100.00CE;

WHEREAS, the Property is located in the "Recreation" category of the Future Land Use Map of the Comprehensive Plan and the "Environmentally Critical" 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 February 27, 2024, 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 found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the variance; and

WHEREAS, on March 18, 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 Section 34-88 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 Special Exception **does/does not** meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is in the best interest of the Town to approve. 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 special exception for the reconstruction of a pool deck, walkways and a fence in the Environmentally Critical zoning district.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; and

In accordance with the additional regulations and considerations found in Section 6-366 of the LDC:

- A. Any repairs must comply with all relevant local and state floodplain regulations.
- B. Repairs may not damage existing dunes or dune vegetation.
- C. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.
- D. A new special exception must be applied for each time the structure is repaired.

Section 4. If the Town Council approves/denies the requested special exception and the following conditions of approval are imposed on the Applicant and the Property:

- A. Additional repairs to major structures in the EC zoning district will require a new special exception.
- B. Approval of this special exception 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.

- C. The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.
- D. Any violation of the conditions of approval shall render the special exception null and void.

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

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King	_____
Scott Safford	_____
Karen Woodson	_____

ADOPTED this ____ day of March 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, Town Attorney

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



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20230280

CASE NAME: Special Exception for repair/ reconstruction of a pool, pool deck, fences and walls, grill area, foot-rinse station, lighting, and beach access path which lie partially or fully seaward in the EC zoning district.

TOWN COUNCIL HEARING DATE: March 18, 2024 at 9:00 AM

LPA HEARING DATE: February 27, 2024 at 9:00 AM

STAFF RECOMMENDATION: Approve Special Exception request with conditions

PREPARED/ SUBMITTED BY: Sarah Propst AICP, PMP/ Jason Green AICP, CFM

I. APPLICATION SUMMARY

Applicant/Owner: Richard Rowe/Pink Shell Vacation Villas

Requests: To repair the existing pool, pool deck, fence, grill area, foot-rinse station, lighting, and beach access path which lie partially seaward of the 1978 Coastal Construction Control Line.

Physical Address: 102 Estero Blvd

STRAP #: 24-46-23-W1-02100.00CE

FLU: Recreation

Zoning: Environmentally Critical

Adjacent zoning and land uses:

North: Residential Multifamily (RM)

Mixed Residential

South: Environmentally Critical (EC)
Recreation

East: Community Facility (CF)/Environmentally Critical (EC)
Recreation: Bowditch Point Regional Park

West: Commercial Planned Development (RC and RM)
Mixed Residential

II. BACKGROUND AND ANALYSIS

Background:

The applicant is proposing the repair/reconstruction of a pool, pool deck, fences and walls, grill area, foot-rinse station, lighting, and beach access path which is sand with pavers to the foot-rinse station. These pool and beach amenities are partially or fully within the Environmentally Critical (EC) zoning district, seaward of the Coastal Construction Control Line (CCCL). All of these features are part of the common element for the Pink Shell Vacation Villas and were in existence in approximately the proposed locations, prior to the establishment of the 1978 CCCL.

These structures are considered major accessory structures and can be replaced in the EC zoning district with approval of a special exception, per Section 34-652 (e) of the land development code. The EC zoning district starts at the 1978 Coastal Construction Control Line (CCCL) and extends seaward to the water. The attached site plan indicates the CCCL as the turquoise line running through the pool and building.

With the reconstruction, the applicant is proposing a minor amendment to the location of the paved grill area, moving it eight feet to the south. None of the grill equipment is permanently installed, gas lines are not proposed.

Analysis:

The condominium structure was built in 1976, per Lee Property Appraiser. Staff does not have a copy of the original development order to verify that the pool and grill area was built at the same time as the condominium, however it likely was part of the original design and therefore built prior to the creation of the 1978 CCCL.

Lighting existed prior to Ian and is proposed for replacement seaward of the CCCL. All lighting on site will be required to meet the sea turtle lighting regulations. The condominium has met the application criteria of providing notice to the condominium ownership of this special exception application and staff has received acknowledgement forms from more than the code required 75% of owners.

The LDC was recently updated to allow major primary and accessory structures to be repaired in the EC zoning district with the approval of a special exception. Prior to the code change, only single-family residences could be repaired in the EC zoning district.

Neighborhood Compatibility:

A review of the aerials up and down the beach indicate that there are several primary and accessory structure that extend over the 1978 CCCL. The aerials are not precise so that may be an over or under estimate of the number. These developments may request special exceptions to repair primary and accessory structures in the same location or may choose to move the structures landward of the CCCL.

Findings and Conclusions:

Section 6-366(b)(3) Regulations and Considerations

LDC Section 6-366 includes additional regulations and considerations for special exception approval of repairs in the EC zoning district:

- a. Any repairs must comply with all relevant local and state floodplain regulations.*

The development must comply with local and state floodplain requirements.

- b. Repairs may not damage existing dunes or dune vegetation.*

The repairs are proposed landward of the dune. No dunes or native vegetation will be impacted. The walkway shown through the vegetation is proposed as sand, at grade.

- c. Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*

Sea turtle nesting season ended on October 31st and will start again March 1st.

- d. A new special exception must be applied for each time the structure is repaired.*

This will be a condition of the special exception approval.

Special Exception Findings

LDC Sec. 34-88(b) sets forth the required findings and conclusions for the approval of a special exception:

- 1) Whether there exist changed or changing conditions which make approval of the request appropriate.*

The pool and all facilities in the EC were destroyed or severely damaged during Ian. Construction seaward of the EC is likely to be damaged by storm surge in the future.

2) *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

Policy 5-D-1 states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

This proposed redevelopment does not create any new development or substantially change the location from what previously existed on the site. Therefore staff believes that this proposed request does not fall within the definition of development in the Town's code of ordinance:

- The LDC defines *Development* as (1) A subdivision, as defined in this chapter; or (2) Any improvement to land, as defined in this chapter.
- The LDC defines *Improvement* to land as any change to land or to any structure on the land, and shall include any movement or grading of land, except grading which is incidental to the removal of exotic vegetation and which is not prohibited by ch. 22 of this LDC; clearing of indigenous plant communities; and the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; provided, however, that any change to a building which does not involve a change in the building floor area shall not be deemed an improvement to land.

3) *Whether the request meets or exceeds all performance and locational standards for the proposed use.*

The request will comply with local, state, and federal air, noise and water pollution standards. It will not adversely affect water quality and it will not create a nuisance to adjacent properties.

4) *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The request will maintain what was previously constructed on this property. It will not have an additional negative impact.

5) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

There is no anticipated negative impact or injury to surrounding properties.

- 6) *Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.*

The EC zoning district allows only passive, movable structures, no new major structures of any kind are allowed, other than dune walkovers through a special exception. Prior to the recent code change, only repairs to primary structures were permitted through a special exception. The recent code amendment allows replacement of major accessory structures also.

III. RECOMMENDATION

Staff finds that the special exception for reconstruction of major accessory structures in the EC zoning district is in compliance with item Sec. 34-88(b)(1). Therefore, staff recommends **APPROVAL** of SEZ20230280 for the reconstruction of a pool, pool deck, at-grade walkway, foot-rinse station, grill station, lighting, and fence seaward of the 1978 CCCL.

At the February 27, 2024 LPA hearing the LPA unanimously recommended approval of the request.

IV. CONDITIONS OF APPROVAL

1. A new special exception must be applied for each time the structures are reconstructed.
2. Approval of this special exception 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.
3. The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.
4. All work and lighting must comply with all sea turtle regulations in the Code of Ordinances and Land Development Code.
5. Any violation of the conditions of approval shall render the special exception null and void.

Staff Report Exhibits:

- A – Complete Application
- B – Survey
- C – Property Owner Acknowledgement List
- D – Postcards to Adjacent 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: 100 / 102 Estero Blvd
 STRAP Number: 24-46-23-W1-02100.00CE
 Applicant: Pink Shell Vacation Villas Phone: (239) 437-0340
 Contact Name: Richard Rowe, HOA President Phone: (239) 247-2867
 Email: rowe88@gmail.com Fax: (239) 437-9378
 Current Zoning District: RM/EC
 Future Land Use Map (FLUM) Category: Mixed Residential/Recreation
 FLUM Density Range: _____ 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*: Richard Rowe, HOA President Phone: 239-247-2867
**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: Sutor, Middleton, Cox & Associates, 15751 San Carlos Blvd #8, Fort Myers, FL 33908
 Email: BillC@smc-cam.com Fax: (239) 437-9378
 Contact Name: Bill Cox - Property Mgmt Phone: (239) 437-0340



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: Holly Baggott Phone: (608) 228-9944
Address: c/o Suitor/Middleton, 15751 San Carlos Blvd #8, Fort Myers, FL 33908
Email: hollybaggot@icloud.com Fax: (239) 437-9378

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Jackie Schulte Phone: (715) 781-3060
Address: c/o Suitor/Middleton, 15751 San Carlos Blvd #8, Fort Myers, FL 33908
Email: jschulte22892@gmail.com Fax: (239) 437-9378

Name: Cathy Scholz Phone: (617) 306-1733
Address: c/o Suitor/Middleton, 15751 San Carlos Blvd #8, Fort Myers, FL 33908
Email: cscholz89@gmail.com Fax: (239) 437-9378

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: _____
- ☐ 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: N/A 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

~~Each condominium owner owns 3.3333%~~
~~of the common area (1/30th). A list of the 30~~
~~owners is included as Exhibit 5.1.~~



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

Richard Rowe

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, Richard Rowe (name), as Board President (title)
of Pink Shell Vacation Villas (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

Pink Shell Vacation Villas

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Richard Rowe

Typed or Printed Name

Board President

Title

November 15th 2023

Date

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 15 day of NOV, 2023, by

Richard Rowe, ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Donna J. Barnett
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 24-46-23-W1-02100.00CE

Property Address: 100 /102 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: 9 Page: 41 Unit: _____ Block: _____ Lot(s): 43 & 44

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) Please see survey feet

Depth (please provide an average width if irregular in shape) _____ feet

Frontage on street: _____ feet. Frontage on waterbody: _____ feet

Total land area: _____ ☐ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

The property is 0.9 mi north of the Sky Bridge on the west (Gulf) side of Estero Blvd.

It is the last structure on the Gulf side before Bowditch Park.

☒ 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-A

Additional Required Information for a Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name: Pink Shell Vacation Villas Post-Hurricane Ian Repairs
Authorized Applicant: Richard Rowe, HOA President
LEOPA STRAP Number(s): 24-46-23-W1-02100.00CE

Current Property Status: Condominium with Customary Accessory Uses
Current Zoning: RM/EC
Future Land Use Map (FLUM) Category: Mixed Residential / Recreation
Platted Overlay? ☐ yes ☒ no FLUM Density Range:

Requested Action:

☒ Use of premises in the EC (Environmentally Critical) zoning district for:
To repair/reconstruct our pool & pool deck, fences, grill area, foot-rinse station and beach access path which lie partially seaward of the 1978 CCCL. These items are part of the common element for Pink Shell Vacation Villas and were in existence in the proposed locations prior to Hurricane Ian and prior to the establishment of the 1978 CCCL.
☐ Use of premises in the _____ zoning district for:



Case# _____

Date Received: _____

PART I
Narrative Statements

A. **Request for:** (indicate the proposed use that requires a special exception)

Please see attachment

B. **Reasons for request:** (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
Please see attachment



Please see attachment

Page 338 of 681

For Consumption of Alcoholic Beverages (COP) license approval:

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

For transit terminals:

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

For use of the EC zoning district:

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

Guide to Filing Supplement PH-A for Special Exceptions

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.

Authorized 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.

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements:

“Request for...”

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

“The property qualifies for a special exception because...”

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

“Granting the requested special exception could impact surrounding properties as follows...”

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

Submittal Requirements Check List and Filing Guide



A completed Public Hearing Application Form.



A completed Supplemental form PH-A.

Site Plan. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.

Guide to Filing Supplement PH-A for Special Exceptions

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.

Authorized Applicant must be the same as on the Request for Public Hearing form.

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- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

"Granting the requested special exception could impact surrounding properties as follows..."

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

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.

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.

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 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 have either of the affidavits in Part V & VI, notarized, signed and submit, as applicable.

**100 / 102 Estero Blvd, Fort Myers Beach, FL 33931
Pink Shell Vacation Villas Post-Hurricane Ian Repairs**

Supplement PH-A

**Part 1
Narrative Statements**

Request for: (indicate proposed use that requires a Special Exception)

The Pink Shell Vacation Villas HOA is requesting a Special Exception to allow for repair/reconstruction of the pool and pool deck, fences, grill area, foot-rinse station and beach access path which lie partially seaward of the 1978 CCCL (in the Environmentally Critical zoning district). These items are part of the common element for Pink Shell Vacation Villas and were in existence in the proposed locations prior to Hurricane Ian and prior to the establishment of the 1978 CCCL.

All repairs will be like-for-like, except that we are adjusting the existing ramp entry to the pool to make it ADA-compliant. This change will be landward of the 1978 CCCL. There will be no expansion of the existing pool deck and pool equipment, and the existing pool shell will be repaired in place.

We have hired an experienced pool contractor, landscaper, and a coastal engineer to guide us in these repairs.

Reason for Request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88):

In accordance with the guidelines provided in LDC Section 34-88(A), we are making this request due to the following changed conditions:

(1) **Hurricane Ian.** Hurricane Ian is the first storm to cause major damage to Pink Shell Vacation Villas' pool and landscaping since its construction in 1976. These changed conditions result in the need for this request for a Special Exception.

(2) **The 1978 Coastal Control Construction Line.** As a condominium developed in 1976, Pink Shell Vacation Villas and its accessory structures pre-date the 1978 CCCL. In fact, Pink Shell Vacation Villas is specifically acknowledged in the Fort Myers Beach Comprehensive Plan as one of the few buildings built seaward of the 1978 CCCL, prior to the use of this line in regulating shoreline development (FMB Comp Plan, Pg. 4-9). At the time of construction, PSVV and its accessory structures were legally conforming.

Our request is consistent with the Fort Myers Beach Comprehensive Plan and Land Development Code because we are not seeking to engage in new development. There will be no expansion into environmentally critical areas and no change in use or intensity of use.

Furthermore, the newly-passed Ordinance 23-13, amending LDC Section 34-652 and Section 6-366, created a pathway for us to seek a Special Exception to repair the damage done by Hurricane Ian to our pool and property. We very much appreciate the efforts made by Town Council, the LPA, and staff to provide this opportunity to restore what we had before the storm.

We are requesting to repair things like-for-like, with the exception that we are requesting to add an ADA-compliant ramp for pool access. This ramp will be located entirely east of the 1978 CCCL and will replace a much steeper pool deck entry that existed before Ian. Our pool equipment was and will remain located east (landward) of the 1978 CCCL. The pool, deck, foot-wash, grill area, and associated fencing will be restored in their prior positions without impacting the beach or dune system.

In accordance with LDC Sections 34-652 and 6-366, all redevelopment will minimize adverse effects on the dune system, and lighting will be compliant with turtle lighting requirements. We are working with a pool contractor, landscaper, and coastal engineer (all from the local area) to ensure we are following local and state policies and objectives. Moreover, we have signed the easement document for beach renourishment, and we look forward to working with the Town to restore our dune to its natural state. Additionally, we are appreciative of the Town's continued support and interest in restoring the beach and dune area as part of the large-scale beach restoration project which will improve the Town's coastal resiliency.

Granting the requested Special Exception could impact surrounding properties as follows:

The proposed repairs will not negatively impact surrounding property owners as this is essentially a like-for-like repair project. Our pool area and associated amenities have been in place since 1976. Repairs will improve aesthetics and safety, compared to current conditions, and will facilitate our efforts to bring owners and guests back to the area to support the local economy.

Thank you for your consideration.



December 4, 2023

Aquatic Custom Pools Inc
P.O Box 3871
North Ft Myers, FL 33918

Owner: PINK SHELL VACATION VILLAS
15751 SAN CARLOS BLVD STE 8
FORT MYERS FL 33908

Construction Site Location: 102 ESTERO BLVD
FORT MYERS BEACH FL 33931

Pool Equipment Repairs Due to Hurricane IAN.

The below is a work Scope outline based on the sketch dated the same. This is a repair and rehab of the pool located at 100 Estero Blvd.

Pool:

- The tile will be replaced
- Mud cap replaced with Non-skid Blue
- Coping to be removed due to hurricane damage and replaced like for like
- Pool finish interior refinished with same type
- Belly band tile replaced along with Rope anchors
- Hand rails replaced
- Ladder replaced with cross braced due to hurricane damage

Patio/Decking:

- Install New pavers over existing decking
- Install New Deck drain to replace damaged one

Privacy wall and Walk way repairs:

Existing access steps are not ADA compliant and are a hazard to patrons and owners. We are seeking to build an ADA-compliant access ramp adjacent to the one currently there, behind CCCL.

- Eliminate the existing steep stepped access
- Build up and create new access slow to meet current guidelines
- Rails both sides and slope will be ADA compliant.
- Replace demolished privacy wall adjacent to Lot 42.



- The existing footer is savable and the New wall will be pinned and extended to 5' as before.
- Knee wall with short fence meeting pool barrier compliance will connect the above to the building parallel on beach side. Part of wall still existing, most will be made new.

Equipment:

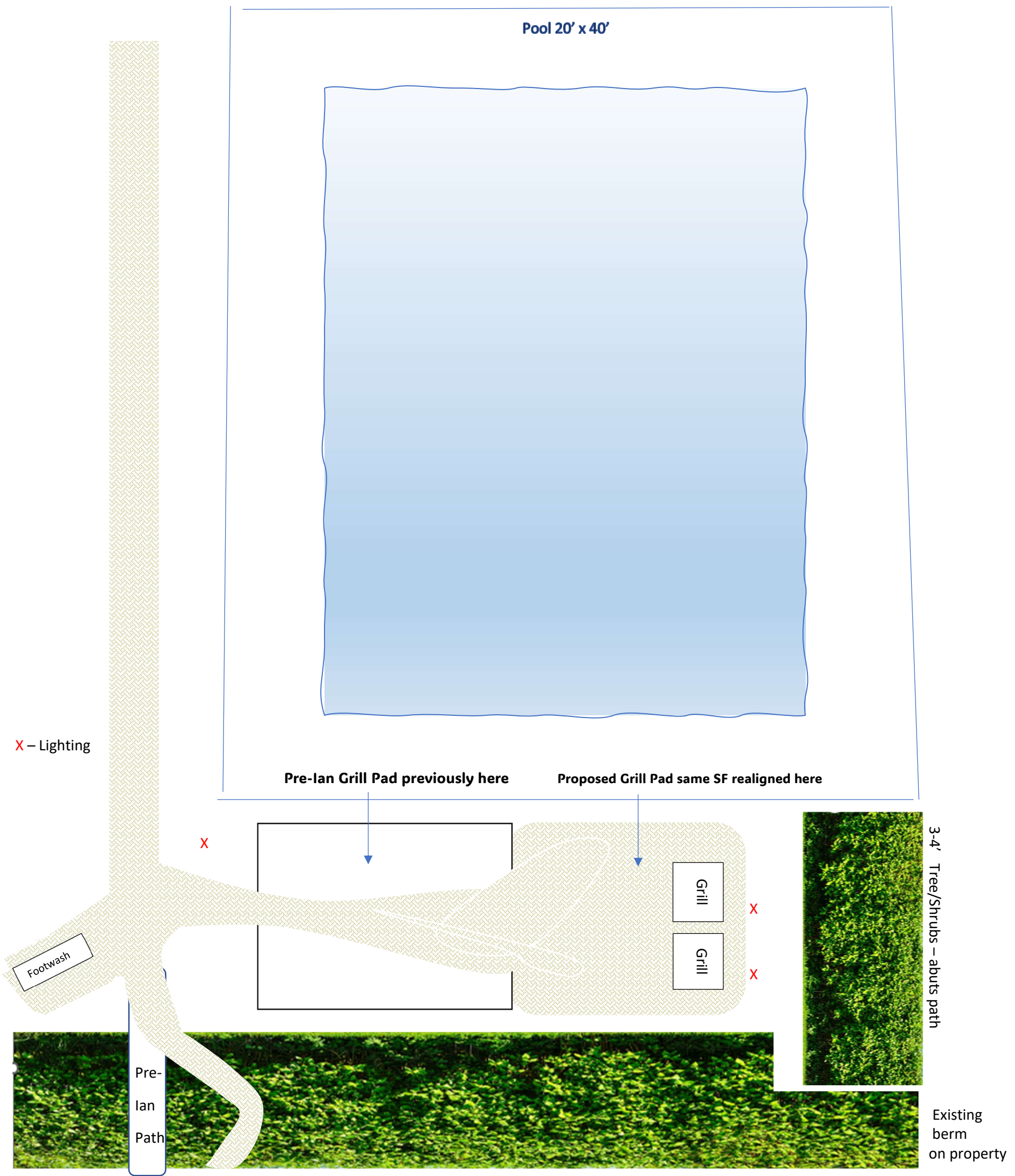
- All Equipment to be replaced with like for like in the same location previous to the storm, located behind CCCL.

Foot-wash, Grill Pad and Path to Beach Access:

- Replace existing damaged red-brick paved foot-wash, grill pad and path to beach access with TriCircle Apollo Pavers (specs attached).
- Grill pad to be shifted 8' south.
- Gas grill are standalone and movable. No gas line will be installed.

If there are any questions or concerns please contact me directly at the below.

William Wyatt
AQUATIC CUSTOM POOLS INC,
D.A.V owned and Operated
CPC1458931
P.O Box 3871
North Ft Myers, FL 33918
Phone: 239-887-5000



Footwash – approx. 4’ x 4’

Grill Pad – approx.. 9’ x 12’; New location moves it 8’ away from the corner of the pool and walkway to beach.

New sand path will wind through the existing berm to beach vs. previous path was straight line.

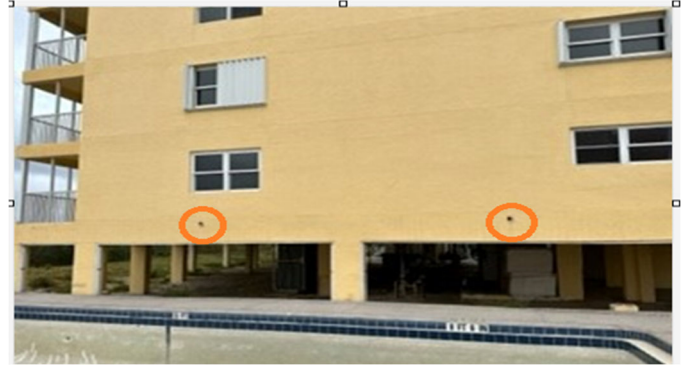
LIGHTING PLAN

POOL & GRILL STATION, 100 ESTERO BLVD., FORT MYERS BEACH, FL

Pool Deck

PRE-IAN: Two (2) wall-mounted light fixtures (installed 1976) on the south-facing side of the building ("red circle" in picture).

POST-IAN: Two (2) wall-mounted light fixtures will be replaced at the same locations with switch and timed motion sensor. Owners will confirm with the Town acceptable Wildlife Turtle Certified down-light fixture for location. However, it should be noted that per Condominium Rules, no swimming is allowed after dusk and the pool gate is locked dusk to dawn.



Grill Station Pad & Walking Path

PRE-IAN: Equipped with two (2) gas grills. Each grill had a 6' x 4" x 4" PVC column to hold a light fixture to illuminate the grill-top if in use after dusk. A Wildlife Turtle Certified down-light fixture was used ("red circle" below), and each light was on a timer ("green square" below), with maximum timer setting of 20 minutes. A 65 lumens turtle friendly bulb was in each fixture. The corner near walkway also had 6' x 4" x 4" PVC column with light fixture and turtle friendly bulb.

POST-IAN: Replacing like-for-like. Total, three down-light fixtures, placed in similar locations with timers as noted, and turtle friendly bulbs.



(SUNLITE) 80147-SU A19/3W/O/LED 3W
120V MEDIUM (E26) BASE ORANGE
TURTLE FRIENDLY (600-610nm) LED A19
65 LUMENS
25,000 HOUR AVERAGE RATED LIFE



Name: FD134-I75
Catalog Number: FD134-I75-xx-LA
Manufacturer: InterGlobal-Inc
Required Options: Amber LED
Link: [InterGlobal-Inc](#)
Wildlife Lighting Certification Number: 2019-021

- Light must be downward directed.
- Maximum mounting height of 8 feet from the floor.
- Not recommended for use above the first habitable floor when located on the shore perpendicular or beach side of a structure.
- Additional shielding may be necessary if visible from the beach.

100 / 102 Estero Blvd, Fort Myers Beach, FL 33931

**Pink Shell Vacation Villas Post-Hurricane Ian Repairs, Application for Public Hearing
Exhibit 6-1**

This property is located on Fort Myers Beach in Lee County, Florida, more particularly described as follows: Lots 43 and 44 Island Shores Club Section, all per plat, in Plat Book 9, Page 41, Public Records of Lee County, Florida.

ISLAND SHORES CLUB SECTION
A SUBDIVISION IN U.S. LOT 1, SECTION 24, T46 S, R23 E
ESTERO ISLAND, LEE COUNTY, FLORIDA
Scale: 1" = 100'

PLAT BOOK 9, PAGE 41

DESCRIPTION

All that part of U.S. Lot 1, Section 24, Township 46 North, Range 23 East, and west of the northwesterly boundary of Unit No. 4, Island Shores according to a map or plat thereof recorded in Plat Book 9 at Page 37 of the public records of Lee County.

DEDICATION

KNOW, ALL MEN BY THESE PRESENTS that John Wolfman and his wife Doris H. Wolfman, the owners of the herein described lands, have caused this plat of ISLAND SHORES CLUB SECTION to be made and do hereby dedicate to the perpetual use of the public, all streets, roads and/or easements shown hereon. Have hereunto set their hands and seals this 15th day of March, A.D. 1952.

WITNESSES: *Doris H. Wolfman*
John Wolfman
WITNESS: *Doris H. Wolfman*
John Wolfman

Petition to Vacate
Petition No. 76-8
Description: Vacation of portion of road
Block F
Date of Approval: 10/7/77
COMB 70 Page 154

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF LEE
I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgments, personally appeared John Wolfman and Doris H. Wolfman, the owners of the herein described lands, and in and who executed the foregoing dedication and they acknowledged before me that they executed the same for the purposes and uses therein mentioned.

WITNESS my hand and official seal of Fort Myers, said County and State this 15th day of March, A.D. 1952.

Robert G. Wolfman
Notary Public, State of Florida
My Commission expires June 30, 1952

APPROVALS

This plat accepted this 15th day of March, A.D. 1952 in open meeting of the Board of County Commissioners of Lee County, Florida.

Approved: *John Wolfman*
Chairman
Clerk: *Doris H. Wolfman*

I HEREBY CERTIFY that this plat of ISLAND SHORES CLUB SECTION has been examined by me and from my examination find that said plat complies in form with the requirements of Chapter 187, Laws of Florida, and that said plat was filed for record at L.L.A.M. this 15th day of March, A.D. 1952, and duly recorded in Plat Book 9, Page 37 of the public records of Lee County, Florida.

Clerk of the Circuit Court in and for Lee County

NOTES
- P.M.'s are 4'-6" x 4'-6" Concrete Monuments.
- Indicated by following from pipe of long set.
- Both shown and are adjacent to a green area.
- Survey lines with angles to show.

These notes, and this plat of ISLAND SHORES CLUB SECTION, have been made and corrected according to a recent survey made and plotted under my direction and that permanent reference monument (P.M.) have been set in accordance with the provisions of Section 17, Chapter 187, Laws of Florida, Acts of 1935.

Reg. Land Surveyor, File Cert. No. 351
Johnson & Colburn, Fort Myers, Fla.

136 207

James Robert Caves, III
Shareholder
Board Certified Specialist in Condominium and
Planned Development Law
Phone: 239.628.4928 Fax: 239.433.5933
rcaves@beckerlawyers.com



Becker & Poliakoff
Six Mile Corporate Park
12140 Carissa Commerce Court, Suite 200
Fort Myers, Florida 33966

Northern Trust Building
4001 Tamiami Trail North, Suite 270
Naples, Florida 34103

November 20, 2023

Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida, 33931

Re: Pink Shell Vacation Villas Condominium Association, Inc. / Opinion Letter Regarding Association's Application

To Whom It May Concern,

Please be advised this Law Firm represents Pink Shell Vacation Villas Condominium Association, Inc. (the "Association"). In that capacity we have been directed to provide this opinion letter to the Town of Fort Myers Beach concerning the reconstruction of the pool located on the Condominium property. Specifically, the Association has advised that the town is requesting an opinion as required by Section 34-201(a)(1)(b)3. of the Fort Myers Beach municipal ordinance.

Specifically, Section 34-201(a)(1)(b) provides as follows:

Where the property is a condominium or a timeshare condominium, as defined and regulated in F.S. chs. 718 and 721, respectively, an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners, or by both the owners' association and no less than 75 percent of timeshare condominium unit owners.

...

3. So as to protect the legal rights of nonparticipating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall 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 town 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 town would violate no such rights.

This opinion letter is intended to comply with subparagraph 3, cited above, confirming that following our examination of the Declaration of Condominium, the Articles of Incorporation, and Bylaws for the Association, there is no prohibition in such documents concerning the Association's authority to submit the subject application. Nor does the subject application violate any rights of a Unit Owner contained in the foregoing documents.

Further, there is no federal or state law regulating condominiums which would prohibit the Association with filing the subject application.

We express no opinion in this letter as to any consent, approval, authorization, or other action or filing necessary for future assertions by the Association.

We express no opinion as to the laws of any jurisdiction other than the laws of the State of Florida and the laws of the United States of America.

The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the State of Florida and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

This opinion is given solely for the use and benefit only of the Town of Fort Myers Beach and is limited in its use to reliance by the Town of Fort Myers and may not be relied upon by any other parties, furnished to any other party, quoted, or otherwise used without the prior express written consent of the undersigned firm. This opinion is as of the date hereof and we disclaim any obligation to advise you of any change which hereafter may be brought to our attention.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'James Robert Caves, III', with a stylized flourish at the end.

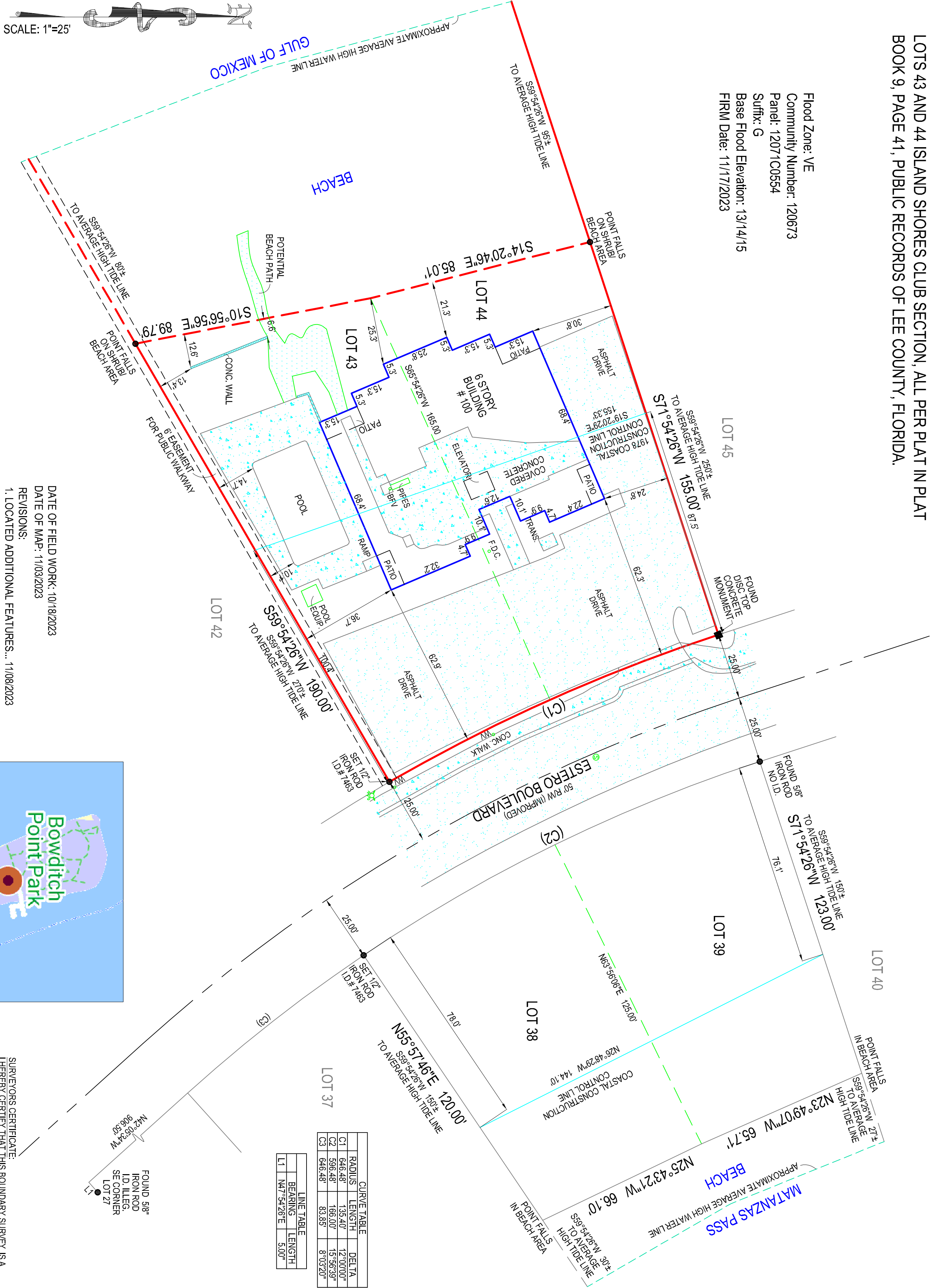
James Robert Caves, III
For the Firm

JRC1/plr

cc: Board of Directors, Pink Shell Vacation Villas Condominium Association, Inc.

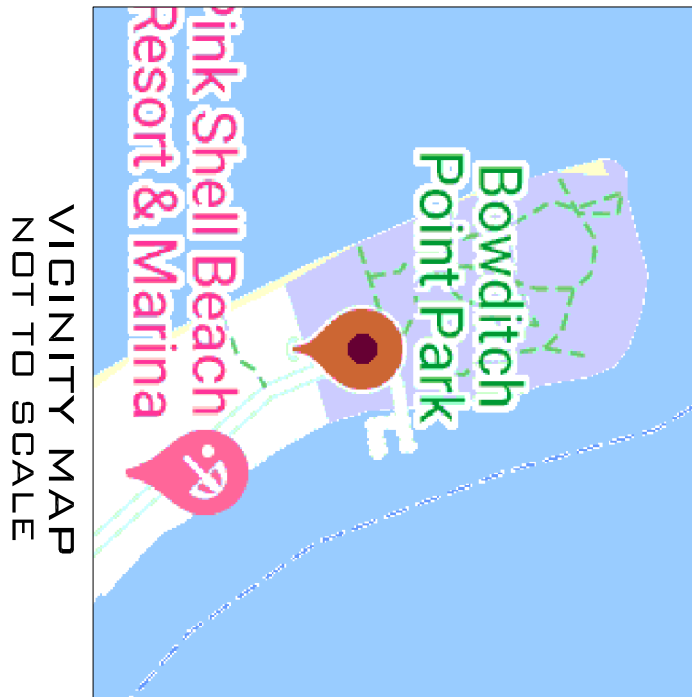
LEGAL DESCRIPTION
LOTS 43 AND 44 ISLAND SHORES CLUB SECTION, ALL PER PLAT IN PLAT
BOOK 9, PAGE 41, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

Flood Zone: VE
Community Number: 120673
Panel: 12071C0554
Suffix: G
Base Flood Elevation: 13/14/15
FIRM Date: 11/17/2023



NOTES:
1. LEGAL DESCRIPTION PROVIDE BY CLIENT
2. NO SEARCH OF THE PUBLIC RECORD FOR THE PURPOSE OF ABSTRACTING TITLE WAS PERFORMED BY THIS OFFICE
3. NO SUBSURFACE IMPROVEMENTS WERE LOCATED AS PART OF THIS SURVEY
4. ALL ANGLES OR BEARINGS AND DISTANCES SHOWN HEREON ARE BOTH RECORD AND MEASURED UNLESS OTHERWISE NOTED
5. SOME FEATURES MAY NOT BE AT SCALE IN ORDER TO SHOW DETAIL.
6. THE BEARINGS SHOWN HEREON ARE BASED UPON THE CENTERLINE OF ESTERO BLVD, HAVING A BEARING OF N42°05'34"W.

DATE OF FIELD WORK: 10/18/2023
DATE OF MAP: 11/03/2023
REVISIONS:
1. LOCATED ADDITIONAL FEATURES... 11/08/2023



CURVE TABLE			
	RADIUS	LENGTH	DELTA
C1	646.48'	135.40'	12°00'00"
C2	596.48'	166.00'	15°56'39"
C3	646.48'	83.85'	8°03'20"

LINE TABLE		
L1	BEARING	LENGTH
L1	N47°54'28"E	5.00'

SURVEYORS CERTIFICATE:
I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY IS A
TRUE AND CORRECT REPRESENTATION OF A SURVEY
PREPARED UNDER MY DIRECTION, NOT VALID
WITHOUT A RAISED EMBOSSED SEAL AND SIGNATURE.

Kenneth Osborne
Digitally signed by
Kenneth Osborne
Date: 2023.11.14
12:04:39 -0500'
(SIGNED)

KENNETH L. OSBORNE
PROFESSIONAL SURVEYOR AND MAPPER #6415

BOUNDARY SURVEY OF
100 & 102 ESTERO BOULEVARD
(PINK SHELL VACATION VILLAS)
FORT MYERS BEACH, FL 33931
PREPARED FOR:
RICHARD ROWE



Project	C-607441	Sheet	1 of 1
Date	10/18/2023		
Scale	1"=25'		

131

Richard Rowe
Denise D Chumbre
PO Box 07264
Fort Myers, FL 33919-6020

134

Christine Walters
224 Carranza Road
Tabernacle, NJ 08088

232

Ms. Ruth E Cudzik
C/o Joy Senn
301 Dall Hall Blvd
Lake Placid, FL 33852

235

A&H 100 Estero FMB, LLC
Holly Baggot
6644 N Chickahauk Trail
Middleton, WI 53562

333

TTK Enterprises, LLC
15 Tremore Way
Holland, OH 43528

431

Richard & Carol Oudersluys Trust
7117 Pelican Bay Blvd # 1901
Naples, FL 34108

434

Amy Ryffel-Kragh
23939 Wimberly Oaks
San Antonio, TX 78261

532

Michael P & Anna L Flanagan
18104 Blue Heron Pointe Dr.
Northville, MI 48168

535

Reggie 535 LLC
345 E. Wacker Dr. #1701
Chicago, IL 60601

633

CMME Properties
Carol Mount
9523 Claychin Ct.
Burke, VA 22015

132

Keith C. & Susan L. Jaggars
844 Tenacity Dr
Longmont, CO 80504

135

Robert & Michele Burns
5965 Baker Ct
Ft. Myers, FL 33919

233

TTK Enterprise LLC
15 Tremore Way
Holland, OH 43528

331

Reed & Vicki Stigen
711 Northridge Way
West Fargo, ND 58078

334

Wilfried & Angela Scholz
105 Bentley Drive
Latham, NY 12110

432

Santo & Catherine Ciccone
1239 Cedar Road
Southport, CT 06890

435

Elyse Shepka
Marlene Znidarsic
1642 S. Fountainhead Rd
Fort Myers, FL 33919

533

Wayne & Jacqueline Schulte
Box 268
Ellsworth, WI 54011

631

Pink Shell Properties LLC
PO Box 2800, PMB 142
Carefree, AZ 85377

634

Penny J Aguirre Trust
8424 40th Ave N.
New Hope, MN 55427

133

Andrew & Holly Baggot
6644 N. Chickahauk Trail
Middleton, WI 53562

231

Judith Clifford
Patricia Steder
9820 Sterling Drive
Miami, FL 33157

234

Elsie Kay & Virginia Leigh Harris
2700 Man O'War Blvd #223
Lexington, KY 40515

332

Suzanne Almaguer
5541 Northwest 49th Terrace
Coconut Creek, FL 33073

335

Richard Cassidy
390 Bayland Road
Fort Myers Beach, FL 33931

433

Dennis McGinnity Trust
440 High Cliffe Lane
Tarrytown, NY 10591

531

Ryreal Florida LLC
27 Stanton Lane
c/o Mary Katherine Herman
Stamford, CT 06902

534

Phyllis Scroggie
PO Box 61596
Fort Myers, FL 33906

632

Melissa Larson Trust
4 1st Street
Excelsior, MN 55331

635

Todd & Cynthia Grover
180 Washington Street
Golden, CO 80403

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners.

(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:

(3) So as to protect the legal rights of non-participating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...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 town would violate no rights.

We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Richard Rowe / Denise Chambre of unit number 131 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Richard Rowe / Denise Chambre of unit number 131 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

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Along with the application, we will have an attorney submit the required letter:

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) 100 Estero Blvd LLC, Keith Jagers of unit number 132 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 7, 2023.

I (Owner/Owners Names) 100 Estero Blvd LLC, Keith Jagers of unit number 132 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 7, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Holly S Baggot and Andrew P Baggot of unit number 133 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Holly S Baggot and Andrew P Baggot of unit number 133 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

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Along with the application, we will have an attorney submit the required letter:

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Christine Walters of unit number 134 hereby acknowledge that I/we have been informed by the applicants (Pink Shell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated 10/8/23.

I (Owner/Owners Names) Christine Walters of unit number 134 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated 10/8/23.

Christine Walters 10/8/23

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

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I (Owner/Owners Names) robert alex burns michele chambre burns of unit number 135 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) robert alex burns michele chambre burns of unit number 135 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) TTK Enterprises Thomas Kindl/ Tracy Kindl of unit number 233 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) TTK Enterprises Thomas Kindl/ Tracy Kindl of unit number 233 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
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I (Owner/Owners Names) Elsie Harris and Virginia Harris of unit number 234 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 8, 2023.

I (Owner/Owners Names) Elsie Harris and Virginia Harris of unit number 234 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 8, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

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Along with the application, we will have an attorney submit the required letter:

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Holly S. Baggot of unit number 235 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Holly S. Baggot of unit number 235 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Reed and Vicki Stigen of unit number 331 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Reed and Vicki Stigen of unit number 331 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

**To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application**

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Along with the application, we will have an attorney submit the required letter:

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Suzanne Davis Almaguer of unit number 332 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Suzanne Davis Almaguer of unit number 332 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) TTK Enterprises Thomas Kindl/ Tracy Kindl of unit number 333 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) TTK Enterprises Thomas Kindl/ Tracy Kindl of unit number 333 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Wilfried W Scholz & Angela L Scholz of unit number 334 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 7, 2023.

I (Owner/Owners Names) Wilfried W Scholz & Angela L Scholz of unit number 334 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 7, 2023.

**To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application**

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners.

(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:

(3) So as to protect the legal rights of non-participating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...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 town would violate no rights.

We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Richard Cassidy/Jennie Sokalsky of unit number 335 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Richard Cassidy/Jennie Sokalsky of unit number 335 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Carol Oudersluys of unit number 431 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Carol Oudersluys of unit number 431 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

**To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
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The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

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Along with the application, we will have an attorney submit the required letter:

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Cicccone ,Dupay,Dominguez of unit number 432 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Cicccone ,Dupay,Dominguez of unit number 432 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

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Along with the application, we will have an attorney submit the required letter:

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Dennis McGinnity Trust, Martha McGinnity TTEE of unit number 433 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 7, 2023.

I (Owner/Owners Names) Dennis McGinnity Trust, Martha McGinnity TTEE of unit number 433 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 7, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

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Along with the application, we will have an attorney submit the required letter:

(3) So as to protect the legal rights of non-participating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...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 town would violate no rights.

We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) ZE Ventures, LLC -Elyse Shepka/Marlene Znidarsic of unit number 435 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) ZE Ventures, LLC -Elyse Shepka/Marlene Znidarsic of unit number 435 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners.

(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:

(3) So as to protect the legal rights of non-participating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...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 town would violate no rights.

We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Ryreal Florida, LLC
Mary Herman, manager of unit number 531 hereby
acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium
Association) for the Special Exception application that this application is being submitted on behalf of the
unit owners of Pink Shell Vacation Villas Condominium Association dated 10-07-2023.

I (Owner/Owners Names) Ryreal Florida, LLC
Mary Herman, manager of unit number 531 hereby agree
to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association
to the Town of Fort Myers Beach on my behalf dated 10-07-2023.

**To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application**

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

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Along with the application, we will have an attorney submit the required letter:

(3) So as to protect the legal rights of non-participating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...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 town would violate no rights.

We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Michael and Anna Flanagan of unit number 532 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Michael and Anna Flanagan of unit number 532 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

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Along with the application, we will have an attorney submit the required letter:

(3) So as to protect the legal rights of non-participating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...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 town would violate no rights.

We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Jackie Schulte of unit number 533 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Jackie Schulte of unit number 533 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

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October 6, 2023
RE: Notice of Special Exception Application

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Along with the application, we will have an attorney submit the required letter:

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Phyllis Tilton Scroggie of unit number 534 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 7, 2023.

I (Owner/Owners Names) Phyllis Tilton Scroggie of unit number 534 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 7, 2023.

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October 6, 2023
RE: Notice of Special Exception Application

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Along with the application, we will have an attorney submit the required letter:

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I (Owner/Owners Names) Reggie 535 llc Chris fahey sole member of unit number 535 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Reggie 535 llc Chris fahey sole member of unit number 535 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Pink Shell Properties, LLC Moira Fahey-Ullrich, Mgr of unit number 631 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) Pink Shell Properties, LLC Moira Fahey-Ullrich, Mgr of unit number 631 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) Mervin and Melissa Larson Revocable Living Trust of unit number 632 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 8, 2023.

I (Owner/Owners Names) Mervin and Melissa Larson Revocable Living Trust of unit number 632 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 8, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach path. The onus is on the Pink Shell Vacation Villas ("PSVV") board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application. The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners.

(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:

(3) So as to protect the legal rights of non-participating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...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 town would violate no rights.

We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) CMME Properties LLC, Carol Mount, Member of unit number 633 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 6, 2023.

I (Owner/Owners Names) CMME Properties LLC, Carol Mount, Member of unit number 633 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 6, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
RE: Notice of Special Exception Application

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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) Penny J Aguirre Trust/Penny Aguirre of unit number 634 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 9, 2023.

I (Owner/Owners Names) Penny J Aguirre Trust/Penny Aguirre of unit number _____ hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 9, 2023.

To the Owners of Pink Shell Vacation Villas Condominiums
October 6, 2023
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We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Suitor & Associates by "signing" and submitting this agreement.

I (Owner/Owners Names) TL 5109, LLC, Todd Grover, Mgr of unit number 635 hereby acknowledge that I/we have been informed by the applicants (PinkShell Vacation Villas Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Pink Shell Vacation Villas Condominium Association dated Oct 7, 2023.

I (Owner/Owners Names) TL 5109, LLC, Todd Grover, Mgr of unit number 635 hereby agree to the Special Exception application submitted by the Pink Shell Vacation Villas Condominium Association to the Town of Fort Myers Beach on my behalf dated Oct 7, 2023.



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 Local Planning Agency/ 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 be sure to visit our website at WWW.FMBGOV.com to check for any updates or changes regarding the upcoming meeting.

TIME: 9 AM

DATE: LPA February 27, 2024, Town Council March 18, 2024

CASE: SEZ20230280

ADDRESS: 102 Estero Blvd

APPLICANT: Pink Shell Vacation Villas/ Richard Rowe HOA President

REQUEST: Special Exception to allow the reconstruction and repair of pool and beach major accessory structures in the Environmentally Critical 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 **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/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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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
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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. **Request:**

Meeting Date: March 18, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20230202, REQUESTING CONSUMPTION ON PREMISES TO ALLOW A BAR/COCKTAIL LOUNGE WITHIN 500 FEET OF A PARK, FOR THE PROPERTY LOCATED AT 1028 FIFTH STREET; 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 LPA hears special exception requests and provides recommendations to the Town Council. A COP for a bar within 500 feet of a park, requires a special exception approval.

What the action accomplishes:

The special exception would allow a bar/cocktail lounge use within 500 feet of a park.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

resolution

4. **Submitter of Information:**

5. **Background:**

The applicant(s) for 1028 Fifth St., *Mr. Waves Island Bar*, are requesting a Special Exception to allow on-premise consumption of alcohol at an existing restaurant, utilizing their 4COP Quota license to be classified as a bar/ cocktail lounge. A Special Exception is required to allow a bar within 500 feet of a park.

Attachments:

1. 24-41, SEZ20230202 1028 Fifth St
2. TC Staff Report
3. Exhibit A - Aerial View
4. Exhibit B - Applicant Narrative
5. Exhibit C - Application Public Hearing
6. Exhibit C - Supplemental Application
7. Front Elevation
8. LPA AND TC postcard 1028 Fifth St

Financial Impact:

unknown

6. **Alternative Action**

APPROVE WITH CONDITIONS

7. **Management Recommendations:**

recommend approval with conditions.

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator/Planner 1
Frankie Kropacek, Operations & Compliance Director

Created/Initiated - 3/11/2024
Approved - 3/11/2024

nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 3/11/2024
Approved - 3/11/2024
Final Approval - 3/11/2024

RESOLUTION NUMBER 24-41

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20230202, REQUESTING CONSUMPTION ON PREMISES TO ALLOW A BAR/COCKTAIL LOUNGE WITHIN 500 FEET OF A PARK, FOR THE PROPERTY LOCATED AT 1028 FIFTH STREET; 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, BC III Masterpiece LLC, owners of the property situated at 1028 Fifth Street, is requesting a special exception which requires consumption on premises to allow a bar/cocktail lounge within 500 feet of a park; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W3-00208.0080; 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 February 27, 2024, 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 found that the request is/ is not consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval/ approval with conditions/ denial of the variance; and

WHEREAS, on March 18, 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 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 a request for variance from LDC 34-638(d)(1)g. which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths.

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.

B. The restaurant will continue to serve food, even during those times when food-sales receipts may drop below 51% of total receipts.

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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of March 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, Town Attorney

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



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ—Special Exception, 20230202

CASE NAME: 1028 Fifth St, requesting Consumption on Premises to allow a bar/ cocktail lounge within 500-feet of a park.

COUNCIL HEARING DATE: March 18, 2024 at 9.00 AM

STAFF RECOMMENDATION: Approve With Conditions

PREPARED/ SUBMITTED BY: Jason Smalley – Senior Planner

LPA OUTCOME

Much of the discussion from LPA members regarded whether the restaurant intended to continue serving food, or whether there was the possibility that they could transition into mainly a bar/ cocktail lounge. The applicant asserted they had no plans to become a bar-only and pointed out that they have been receiving a good response to their breakfast/ brunch options to show that they are focused on food service, not just alcohol sales.

The final vote was 7-0 in favor of recommending approval to the Town Council.

I. APPLICATION SUMMARY

Applicant/Owner: Waves Island Bar Limited Partnership/ Keith E. Long

Request: Requesting a Special Exception to have a designation as a bar/ cocktail lounge in addition to their primary use as a restaurant, within 500-feet of a park.

Subject property: See attached Aerial

Physical Address: 1028 Fifth Street

STRAP #: 24-46-23-W3-00208.0080

FLU: Pedestrian Commercial

Zoning: Downtown

Adjacent zoning and land uses:

North: Downtown
Commercial-Retail

South: Downtown
Commercial Retail

East: Commercial Planned Development (CPD)
Commercial Resort

West: Downtown
Commercial-Retail

II. BACKGROUND AND ANALYSIS

Background:

The applicant(s) for 1028 Fifth St., *Mr. Waves Island Bar*, are requesting a Special Exception to allow on-premise consumption of alcohol at an existing restaurant, utilizing their 4COP Quota license to be classified as a bar/ cocktail lounge.

The lot's current use as a restaurant will continue to exist but the applicant(s) are requesting approval for the classification of bar/ cocktail lounge to hedge against non-compliance if the applicant(s) alcohol receipts constitute more than 50% of sales in a given timeframe. The applicant states that the nature of the business will not change, the Special Exception request is simply to avoid a hypothetical situation.

Analysis:

Mr. Waves Island Bar recently opened after Hurricane Ian in an existing location on the edge of the Town's Times Square. Prior to storm the location was being used for retail and personal services like hair braiding and temporary tattoos. Currently the location is within 500-feet of two public parks (Crescent Beach and Lynn Hall Memorial). The proximity to the parks necessitated the Special Exception approval for use as a bar/ cocktail lounge.

While the location of their business is within 500-feet of two parks the business is entirely under the roof and doesn't have outdoor seating which might lead to negative interactions with the wider community and would blunt much of the interior noise generally expected from restaurants or bar/ cocktail lounges.

Requirements for restaurants providing alcohol for consumption on-site include that a minimum number of parking have been met. Lots located on the Town's pedestrian plaza –otherwise known as Times Square—are not required to provide parking since that area is known as a “park once” zone and public parking is available in lots located in the general vicinity of the plaza, and utilizing existing street parking spaces.

Neighborhood Compatibility:

The Town's Times Square and the surrounding area is generally understood to be the commercial hub of the island. Prior to, and after the storm the general area surrounding the site was being used for restaurants, retail and other general commercial activities.

Since the storm a large resort has opened across Estero from the applicant's lot, the beach parks (Crescent Beach Park and Lynn Hall Park) which initiated the need for a Special Exception are still being reconstructed and the general volume of noise and pedestrian traffic has increased as more businesses open and more residents/ visitors return to the area. Any possible negative outcome that might be expected from approval of a bar/ cocktail lounge use would need to be weighed against the increased noise and pedestrian traffic associated with the newly opened resort and the continued use of Times Square for public and commercial uses.

Findings and Conclusions:

LDC Sec. 34-88 sets forth the required findings and conclusions for the approval of a special exception:

a. Whether there exist changed or changing condition which make approval of the request appropriate

The uses and amenities which existed prior to the storm have changed, the two closest parks to the applicants' lot have reduced usage since the storm. With time the numbers will return to previous levels, however.

b. Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.

The request is consistent with goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan and the Future Land Use Map (Pedestrian Commercial).

c. Whether the request meets or exceeds all performance and locational standards for the proposed use

The request meets performance and location standards if approved. Parking requirements have been met.

d. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

The request will have no impact on protection, conservation, or preservation of environmentally critical areas and natural resources

e. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Any possible nuisance, particularly noise nuisances, would need to be weighed against the opening of a new resort within the general area of the applicants' lot and the reduced use of the two closest parks.

f. Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Town's Land Development Code.

The request will be in compliance with the applicable zoning provisions and supplemental regulations.

III. RECOMMENDATION

Staff finds that the request for a bar/ cocktail lounge Special Exception meets the criteria set forth in Section 34-88 of the LDC.

Therefore, staff recommends that the LPA recommend **APPROVAL WITH CONDITIONS** for SEZ-20230202, to allow Consumption On Premises as a bar/ cocktail lounge.

IV. CONDITIONS OF APPROVAL

- 1) Approval of this special exception 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.

- 2) The restaurant will continue to serve food, even during those times when food-sales receipts may drop below 51% of total receipts.

Staff Report Exhibits:

A – Aerial

B – Applicant Narrative

C – Complete Application

BC III MASTERPIECE LLC REQUEST FOR SPECIAL EXCEPTION (4COP-SFS)
FORT MYERS BEACH COMMUNITY DEVELOPMENT
1028 FIFTH STREET

NATURE OF REQUEST:

This zoning application for Special Exception is to allow on-premise consumption of alcoholic beverages (Beer Wine & Liquor) at an existing Bar & Eatery concept known as Waves Island Bar located at 1028 FIFTH ST. Applicant seeks this special exception to allow for the implementation of a 4COP QUOTA liquor license issued by Florida DBPR - Division of Alcoholic Beverages & Tobacco under a bar/cocktail lounge classification. Applicant intends to continue existing operation of its establishment as a Bar & Eatery, only now under a 4COP Quota license to provide for legal compliance in the event liquor sales exceed 51%--which is prohibited under the existing 4COP SFS license. Under the current code, the classification of a bar/cocktail lounge requires a special exception application.

Currently the property has a DOWNTOWN zoning designation and is in the Pedestrian Commercial Future Land Use category. The subject area of consumption is located within an existing structure contained under roof and is in compliance with all distance buffer requirements.

Regarding the criteria in LDC 34-88, Applicant contends that the operation of the business described herein is consistent with the goals, objectives and policies of the Plan and its designation in the Pedestrian Commercial Land Use Classification. The Bar & Eatery is situated in a well-known commercial cluster in the Downtown designation of the beach, and is surrounded by many substantially similar uses nearby. The business is locally owned and is widely accepted by the community. The implementation of a 4COP Quota license is in essence a safeguard against the potential of the gross alcohol sales exceeding 50%, which would be a violation of state laws under the current 4COP SFS liquor license. This is therefore administrative in nature and shall in no way adversely affect the current harmonious operation of the nearby businesses or neighbors and will not otherwise disturb the continued enjoyment of surrounding properties.

Applicant further contends that this special exception, if approved, shall have no effects on any environmentally critical and sensitive areas and natural resources, as the structure is already existing and will operate in a substantially similar fashion to nearby establishments.

In closing, the proposed use will operate without detrimental effect to the public interest, health, safety, comfort convenience and welfare of the citizens. The 4COP Quota necessitating the bar/cocktail lounge classification is a benign use that will not adversely affect the public in general nor operate in a manner inconsistent with surrounding uses—one of which is the newly opened Margaritaville Resort which also operates under a 4COP Quota. The proposed use is otherwise consistent with the goals and objectives of the FMB comprehensive plan and LDC.

Regarding parking, the property has been determined to be within the pedestrian plaza parking designation which is entitled to a multiplier of 0 for parking calculations.

TYPE(S) OF STATE ALCOHOLIC BEVERAGE LICENSE TO BE ACQUIRED:

4COP- Quota – Beer/Wine/Liquor offered for sale and consumption.



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: 1028 FIFTH ST
STRAP Number: 24-46-23-W3-00208.0080
Applicant: WAVES ISLAND BAR, LIMITED PARTNERSHIP Phone: (239) 400-2060
Contact Name: KEITH E LONG Phone: (239) 400-2060
Email: KEITH@LONGLAWFL.COM Fax: _____
Current Zoning District: DOWNTOWN
Future Land Use Map (FLUM) Category: PEDESTRIAN COMMERCIAL
FLUM Density Range: _____ 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*: WAVES ISLAND BAR, LIMITED PARTNERSHIP Phone: (239) 400-2060

**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: 151 MATANZAS ST
Email: KEITH@LONGLAWFL.COM Fax: _____
Contact Name: KEITH LONG Phone: (239) 400-2060



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: KEITH LONG / LONG LAW, P.A. Phone: (239) 400-2060
Address: 1306 SE 46TH LN. STE 1 CAPE CORAL, FL 33904
Email: KEITH@LONGLAWFL.COM Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ 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: _____
- ☐ 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

NINA BIRKHART, 1337 BRADFORD ROAD, FORT MYERS, FL 33901

DANIEL J CLARKSON 1337 BRADFORD ROAD FORT MYERS, FL 33901

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.

D. Clarkston
Signature

Daniel Clarkston
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, *Daniel Clarkston* (name), as *AMBR* (title)
of *BC III MASTERPIECE 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

BC III MASTERPIECE LLC

Name of Entity (corporation, partnership, LLP, LLC, etc)

Daniel Clarkston
Signature

AMBR
Title

Daniel Clarkston
Typed or Printed Name

Date

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 30 day of June, 2023, by _____ ☒ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Millani Roman
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 24-46-23-W3-00208.0080

Property Address: 1028 FIFTH ST

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) _____ feet

Depth (please provide an average width if irregular in shape) _____ feet

Frontage on street: _____ feet. Frontage on waterbody: _____ feet

Total land area: _____ ☐ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

SOUTH OFF SKY BRIDGE ON WESTERN SIDE BEFORE SAN CARLOS

BLVD TURNS EAST

☒ 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



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-A

Additional Required Information for a Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name: 1028 FIFTH ST COP
Authorized Applicant: WAVES ISLAND BAR LIMITED PARTNERSHIP
LEOPA STRAP Number(s): 24-46-23-W3-00208.0080

Current Property Status:
Current Zoning: DOWNTOWN
Future Land Use Map (FLUM) Category: PEDESTRIAN COMMERCIAL
Platted Overlay? ☐ yes ☐ no FLUM Density Range:

Requested Action:

☐	Use of premises in the EC (Environmentally Critical) zoning district for:
☒	Use of premises in the <u>DOWNTOWN</u> zoning district for:
TO ALLOW CONSUMPTION ON PREMISES OF ALCOHOLIC BEVERAGES	
IN CONJUNCTION WITH A 4COP QUOTA LIQUOR LICENSE	
UTILIZED UNDER A BAR/COCKTAIL LOUNGE CLASSIFICATION	



Case# _____

Date Received: _____

PART I
Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

SEE ENCLOSED REQUEST STATEMENT

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
SEE ENCLOSED REQUEST STATEMENT

Granting the requested Special Exception could impact surrounding properties as follows:
SEE ENCLOSED REQUEST STATEMENT

PART 2 Submittal Requirements

All applications for a special exception must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplemental form PH-A
- 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; all proposed structures and uses for the site; and any proposed fencing and screening.
- Fee in the amount of \$3800.00/\$3300.00 for an amendment

For New Communication Towers:

- a. Lee County Application for Communication Tower
- b. Shared-Use Plan Agreement

For Consumption of Alcoholic Beverages (COP) license approval:

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

For transit terminals:

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

For use of the EC zoning district:

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

Guide to Filing Supplement PH-A for Special Exceptions

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.

Authorized 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.

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements:

“Request for...”

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

“The property qualifies for a special exception because...”

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

“Granting the requested special exception could impact surrounding properties as follows...”

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

Submittal Requirements Check List and Filing Guide

☐

A completed Public Hearing Application Form.

☐

A completed Supplemental form PH-A.

Site Plan. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.

Guide to Filing Supplement PH-A for Special Exceptions

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.

Authorized 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.

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements: "Request for..."

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

"The property qualifies for a special exception because..."

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

"Granting the requested special exception could impact surrounding properties as follows..."

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

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.

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.

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 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 have either of the affidavits in Part V & VI, notarized, signed and submit, as applicable.





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 Local Planning Agency/ 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 be sure to visit our website at WWW.FMBGOV.com to check for any updates or changes regarding the upcoming meeting.

TIME: 9 AM

DATE: LPA February 27, 2024, and Town Council March 18, 2024

CASE: SEZ20230202

ADDRESS: 1028 Fifth St

APPLICANT: Waves Island Bar/Keith Long

REQUEST: A special exception to allow on-premises consumption of alcohol at a bar within 500 feet of a park.

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 **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/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
2525 Estero Blvd,
Fort Myers Beach, FL 33931

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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. **Request:**

Meeting Date: March 18, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20230293, REQUESTING A SPECIAL EXCEPTION FROM LDC 34-3238(2)(e)(4)(a). WHICH REQUIRES AN INCREASE TO THE NUMBER OF RESIDENTIAL BEDROOMS WHICH MAY BE DEVELOPED WHILE UTILIZING THE POST DISASTER BUILDBACK ORDINANCE, FOR THE PROPERTY LOCATED AT 923 THIRD STREET; 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 LPA hears special exception requests and makes recommendations to the Town Council. A special exception is required to allow additional rooms in a structure using the Post Disaster Buildback to rebuild a structure that is noncompliant for density.

What the action accomplishes:

If approved, the applicant may develop a total of 6 bedrooms to be used throughout both dwelling units in the home.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The owner of 923 Third St., is requesting a Special Exception to increase the number of bedrooms which can be redeveloped utilizing the Post Disaster Buildback policy. The structure had four total bedrooms and three bathrooms prior to the storm, the applicant is requesting an additional 2 bedroom for a total of 6 bedrooms. Based on supporting data submitted by the applicant, staff was able to confirm that the structure was eligible to rebuild two (2) living units utilizing the Post Disaster Buildback language (VAR20230142; 12/18/2023).

Attachments:

1. Res 24-40- 923 Third St_Additional Rooms
2. Council Staff Report
3. Exhibit A - LEEPA Tax Card
4. Exhibit A - LEEPA Tax Card 2
5. Exhibit B - Proposed Site Plan
6. Exhibit C - Application for Public Hearing
7. Exhibit C - Application for Special Exception
8. Survey
9. Aerial
10. LPA AND TC postcard 923 Third St (002)

Financial Impact:

unknown

6. **Alternative Action**

Approve with Conditions

7. **Management Recommendations:**

Recommend denial of request for additional rooms.

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator/Planner 1
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/7/2024
Approved - 3/7/2024
Approved - 3/7/2024
Approved - 3/11/2024
Final Approval - 3/11/2024

RESOLUTION NUMBER 24-40

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20230293, REQUESTING A SPECIAL EXCEPTION FROM LDC 34-3238(2)(e)(4)(a). WHICH REQUIRES AN INCREASE TO THE NUMBER OF RESIDENTIAL BEDROOMS WHICH MAY BE DEVELOPED WHILE UTILIZING THE POST DISASTER BUILDBACK ORDINANCE, FOR THE PROPERTY LOCATED AT 923 THIRD STREET; 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, Christopher C & Kenneth J Mosteiro, owners of the property located at 923 Third Street, are requesting a special exception from LDC 34-3238(e)(4)(a). which requires an increase to the number of residential bedrooms which may be developed while utilizing the Post Disaster Buildback Ordinance; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W3-0030A.0050; 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 February 27, 2024, 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 found that the request is/ is not consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval/ approval with conditions/ denial of the variance; and

WHEREAS, on March 18, 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 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 a request for variance from LDC 34-638(d)(1)g. which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths.

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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of March 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, Town Attorney

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



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20230293

CASE NAME: 923 Third Street; requesting a Special Exception to increase the number of bedrooms in a residence while utilizing the Post Disaster-Buildback codes of the LDC sec. 34-3238(2)(e)(4)(a).

COUNCIL HEARING DATE: March 18, 2024, at 9 AM

STAFF RECOMMENDATION: DENIAL

**PREPARED/
SUBMITTED BY:** Jason Smalley- Senior Planner

LPA OUTCOME

LPA discussion was largely focused on the proposed design of the structure and whether this application and the applicant's previously approved variance could have been more quickly addressed through a wholistic process using a different, streamlined process.

The LPA voted 7-0 to recommend approval to the Town Council.

I. APPLICATION SUMMARY

Applicant/Owner: Christopher Mosteiro – Owner/ Applicant

Request: Additional bedrooms with the Post Disaster Buildback

Subject property: See attached site plan

Physical Address: 923 Third Street

STRAP #: 29-46-23-W3-0030A.0050

FLU: Mixed Residential
Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North: COMMERCIAL MARINA (CM)
Marina
South: RESIDENTIAL CONSERVATION (RC)
Single-Family Residential
East: RESIDENTIAL CONSERVATION (RC)
Single-Family Residential
West: RESIDENTIAL CONSERVATION (RC)
Single-Family Residential

II. BACKGROUND AND ANALYSIS

Background:

Christopher Mosteiro, the applicant for 923 Third St., is requesting a Special Exception to increase the number of bedrooms which can be redeveloped utilizing the Post Disaster Buildback policy. Based on data available from the Lee County Property Appraiser's office, the structure had 3 total bedrooms and 2 bathrooms prior to the storm. The applicant disputes this with pictures and plans and has stated that there were 4 bedrooms, 3 bathrooms. The applicant is requesting additional rooms for a total of 6 bedrooms. The homeowner has stated that he intends to live in one of the dwelling units and rent the other dwelling unit as allowed for in his zoning district. Based on supporting data submitted by the applicant, staff was able to confirm that the structure was eligible to rebuild two (2) living units utilizing the Post Disaster Buildback language (VAR20230142; 12/18/2023).

Prior to Hurricane Ian the primary structure was non-conforming due to rear setbacks and the lot's dimensions were conforming for minimum lot area within the residential conservation zoning district. An Administrative Variance was approved in 2007 to construct a deck and stairs 5-feet from the rear property line (ADD2007-0009; 12/7/2007); A variance was approved in 2023 to reduce front setbacks 9.5-feet to accommodate a third floor deck, and construct approximately 100-square feet of additional roofed area (VAR20230142; 12/18/2023).

Analysis:

The purpose of the RC zoning district is to recognize certain older neighborhoods that had been zoned for duplex, multifamily, or mobile home purposes prior to incorporation of the town. The lot exists within a weekly rental area along with the surrounding properties on Third Street. The subject property is an interior lot that is rectangular and is adjacent to a marina and within a single-family neighborhood. The lot has a depth of approximately 80-feet and a width of approximately 50-feet, requiring a street setback of 25-feet, side setbacks of 7.5-feet, and rear setbacks of 20-feet. The property has an existing single-family home with an additional accessory unit, which was moderately damaged by Hurricane Ian.

Neighborhood Compatibility:

The lot sits within an RC zoned neighborhood, although the lots on the corner of Old San Carlos and Third street are zoned Downtown. The neighborhood sits adjacent to Moss Marina and less than 400-feet from Old San Carlos Blvd.

Based on analysis of surviving structures in the wider Third St./ Harbor/ Bonita neighborhood, there is an average of 3.2 bedrooms per lot. While the size of the lot and structure that the applicant has proposed is not out of scale to the rest of the neighborhood, the applicant's proposal to increase the number of bedrooms to six would be nearly double the 3.2 bedroom average in surrounding structures. Doubling the number of bedrooms impacts the number of guests that can reasonably be expected to stay in this accessory unit.

The applicant will be required to develop four parking spaces to accommodate the two dwelling units which exist. A condition has been included to ensure that parking can be completely accommodated on his property for himself and his guests.

Findings and Conclusions:

LDC Sec. 34-88 sets forth the considerations which must be addressed for the approval of a Special Exception:

- a. Whether there exist changed or changing conditions which make approval of the request appropriate.**
 - Since the hurricane the marina directly adjacent to the applicant's property has begun the process of redeveloping their site to be a resort, with the expectation that the character of the neighborhood will change based on the proposed intensity of the proposed planned development.
- b. Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.**
 - The neighborhood that the applicant's structure resides within is a weekly short-term rental and the zoning classification already accounts for development other than single-family homes.

- c. **Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.**
 - Multi-family and short term rental of homes in this zone was already allowed.
- d. **Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.**
 - Staff does not expect there to be detrimental outcomes for the environment, critical areas or natural resources if the Special Exception were to be approved.
- e. **Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.**
 - The expected increase in the number of renters that could utilize the applicant's property could be detrimental to quality of life of surrounding homeowners, but any possible nuisance could be addressed through an increase in the number of required parking spaces and additional required buffering to protect neighbors from any increase in noise.
- f. **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.**
 - The applicant has recently applied for, and received reductions to setbacks on the redevelopment of the structure, other zoning requirements not addressed through the approved variances will be dealt with during normal permitting review.

III. RECOMMENDATION

Staff has reviewed the request for a Special Exception contained in LDC sec. 34-3238(2)(e)(4) and found that the requested increase in the number of bedrooms does not meet the requirements set forth in sec. 34-88.

Therefore, staff recommends **DENIAL** of SEZ20230293, a request to develop two additional bedrooms, for a maximum of 6 bedrooms.

IV. CONDITIONS FOR APPROVAL

If the LPA recommends approval for the Special Exception, town's staff recommends the following conditions of approval.

- 1) Four parking spaces must be provided on site. It will be the responsibility of the applicant to ensure that vehicles have access to a stabilized parking space and that on-street parking does not occur.

- 2) The applicant must install and maintain a landscaped buffer area to address any nuisance from an increase in the number of short-term renters that the structure may now accommodate.
- 3) Should the home be demolished and the site redeveloped, the approved variances will become null and void and the new structure will be expected to meet the codes in place at the time of review.
- 4) Approval of this special exception 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

- A. Floor Plans/ Tax Cards
- B. Proposed Site Plan
- C. Application

Exhibit A

LEE COUNTY PROPERTY APPRAISER
GENERATED ON 2/18/2024 12:11 PM

Current Working Values

SITE ADDRESS
923 THIRD ST
OWNER'S NAME
MOSTEIRO CHRISTOPHER C +
OWNER'S ADDRESS
923 THIRD ST
FORT MYERS BEACH FL 33931

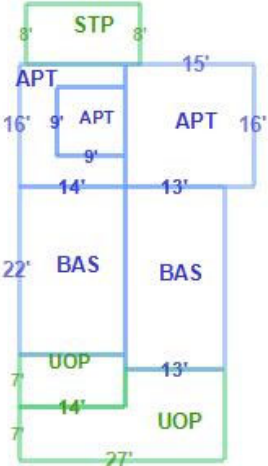
PROPERTY DESCRIPTION
MATANZAS VIEW
BLK A PB 9 PG 40
LOT 5

DOR CODE 08 - MULTI-FAMILY LESS THAN 10
NBHD CODE 07-110.0
MATANZAS VIEW S/D

BUILDING CHARACTERISTICS			BUILDING SUBAREA DETAIL					
ELEMENT	CODE	TYPE / DESCRIPTION / VALUE	AREA TYPE	YEAR BUILT	GROSS AREA	PCT BASE	ADJ AREA	CAP COST
STORIES	1.0		APARTMENT	1955	496	100	496	11,865
BEDROOMS	3		BASE	1955	620	100	620	14,831
BATHROOMS	2.0		FINISHED LOWER LEVEL	1955	584	70	408	9,760
EXTERIOR WALL	8	WOOD ON SHEATHING	FINISHED LOWER UTILITY	1955	81	30	24	574
EXTERIOR WALL	0	NONE	LOWER CARPORT / OPEN PORCH	1955	549	5	27	646
ROOF STRUCTURE	1	FLAT	STOOP	2007	120	10	12	287
ROOF COVER	2	ROLLED COMPOSITION	UNFINISHED OPEN PORCH	2007	352	15	53	1,268
INTERIOR WALL	4	PLYWOOD PANEL						
INTERIOR WALL	5	DRYWALL						
INTERIOR FLOOR	5	ASPHALT TILE						
INTERIOR FLOOR	9	PINE/LAMINATE/LUXURY VINYL						
HEATING FUEL	4	ELECTRIC						
HEATING TYPE	4	FORCED AIR-DUCTED						
AC TYPE	3	CENTRAL						
QUALITY	3.0000	AVERAGE						
CEILING HEIGHT	CLGHT	CEILING HEIGHT UNDER 8'						
TOTALS					2,802		1,640	39,230

FOLIO ID: 10127314 STRAP: 24-46-23-W3-0030A.0050						
CARD 1 of 1						
STRUCT INDEX	BASE RATE	EFF BASE RATE	EFF AREA	RCN	REMAINING WORTH	COST VALUE
0.67	151.92	101.79	1,640	166,936	24%	39,230
IMP TYPE	114 - Family Conversion		MODEL	1 - SINGLE FAMILY RESIDENTIAL		

FLOOR 1



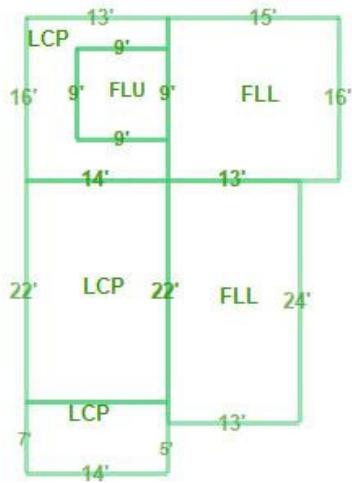
LINE	CODE	DESCRIPTION	LENGTH	WIDTH	UNITS	UNIT PRICE	PCT COND	L/B	YEAR	AMN DEPR	DEPR ADJ	CAP FLAG	COST
TOTAL OF EXTRA FEATURE VALUES													

LINE	CODE	DESCRIPTION	ZONING	FRONT	DEPTH	DF	CF	TYPE	UNIT PRICE	UNITS	UT	TOTAL ADJ	CAP	EVAL NOTES
1	100	SFR	TFC2	0	0	1.00	1.00	0	230,724.00	0.75	UT	1.00	-	TD
2	100	SFR	TFC2	0	0	1.00	1.00	0	230,724.00	0.25	UT	1.00	-	TD
TOTAL OF LAND LINE VALUES														230,724

BOOK/PAGE OR INSTRUMENT	DATE	TYPE	OVR	V	SALE INST CODE	PRICE	VALUE SUMMARY	Current Values	2023
2017000070226	3/31/2017	01	01	I		420,000	BUILDING COST VALUE	39,230	40,899
20070000211970	6/28/2007	06	06	I		270,000	BUILDING EXTRA FEATURES	*	*
2490/2846	4/1/1994	06	06	I		103,000	LAND EXTRA FEATURES	*	*
1848/2565	5/1/1986	01	01	I		89,500	LAND VALUE	230,724	230,724
COST APPROACH VALUE								269,954	271,623
INCOME APPROACH VALUE								*	*
SALES APPROACH VALUE								230,734	230,734
MARKET VALUE								230,734	230,734

LEE COUNTY PROPERTY APPRAISER GENERATED ON 2/18/2024 12:11 PM		BUILDING CHARACTERISTICS			BUILDING SUBAREA DETAIL					FOLIO ID: 10127314 STRAP: 24-46-23-W3-0030A.0050																																																																																				
Current Working Values		ELEMENT	CODE	TYPE / DESCRIPTION / VALUE	AREA TYPE	YEAR BUILT	GROSS AREA	PCT BASE	ADJ AREA	CAP	COST	CARD 1 of 1 (Continued)																																																																																		
SITE ADDRESS 923 THIRD ST OWNER'S NAME MOSTEIRO CHRISTOPHER C + OWNER'S ADDRESS 923 THIRD ST FORT MYERS BEACH FL 33931		CONDITION	COND	CONDITION GOOD								STRUCT INDEX	BASE RATE	EFF BASE RATE	EFF AREA	RCN	REMAINING WORTH	COST VALUE																																																																												
PROPERTY DESCRIPTION MATANZAS VIEW BLK A PB 9 PG 40 LOT 5		ELEVATION	ELEV	ELEVATION 7-9'																																																																																										
		FOUNDATION	FNDTN	FOUNDATION BREAKAWAY WALLS																																																																																										
		FLOOR PLAN	FLRPLN	FLOOR PLAN TRADITIONAL																																																																																										
		DRIVEWAY	DRIVE	DRIVEWAY NONE/GRAVEL																																																																																										
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		TOPOGRAPHY	TOPOG	TOPOGRAPHY STREET GRADE																																																																																										
		EXTRA KITCHENS	XKI	1.00																																																																																										
		LIVING UNITS	LVGU	2.00																																																																																										
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FLOOR 0



FLOOR 1

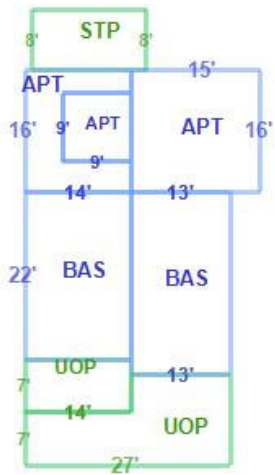


Exhibit A continued

Use Code	Use Code Description	Number of Units	Unit of Measure
100	Single Family Residential	0.75	Units
100	Single Family Residential	0.25	Units

Buildings**Building 1 of 1****Building Characteristics**

Improvement Type	Model Type	Stories	Living Units
114 - Family Conversion	1 - SINGLE FAMILY RESIDENTIAL	1.0	2
Bedrooms	Bathrooms	Year Built	Effective Year Built
3	2.0	1955	1989

Building Subareas

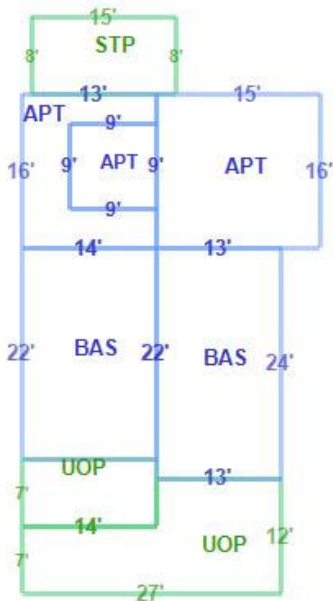
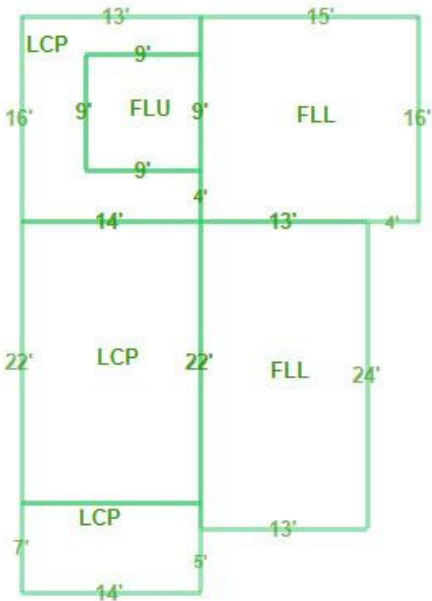
Description	Heated / Under Air	Area (Sq Ft)
APT - APARTMENT	Y	496
BAS - BASE	Y	620
FLL - FINISHED LOWER LEVEL	N	584
FLU - FINISHED LOWER UTILITY	N	81
LCP - LOWER CARPORT / OPEN PORCH	N	549
STP - STOOP	N	120
UOP - UNFINISHED OPEN PORCH	N	352

Building Front Photo



Photo Date: April of 2017

Building Footprint



Taxing Authorities

Generated on 2/18/2024 12:12 PM

Sales / Transactions

Generated on 2/18/2024 12:12 PM

Proposed Site Plan





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: 923 Third Street, Fort Myers Beach, FL 33931

STRAP Number: 24-46-23-W3-0030A.0050

Applicant: Christopher Mosteiro Phone: 954-918-8270

Contact Name: Christopher Mosteiro Phone: 954-918-8270

Email: chris.mosteiro@gmail.com Fax: _____

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: _____ 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*: Christopher Mosteiro Phone: 954-918-8270

**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: 923 Third Street, Fort Myers Beach, FL 33931

Email: chris.mosteiro@gmail.com Fax: _____

Contact Name: Christopher Mosteiro Phone: 954-918-8270



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: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ 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: _____
- ☐ 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: Christopher Mosteiro Phone: 954-918-8270

Mailing Address: 923 Third Street, Fort Myers Beach, FL 33931

Email: chris.mosteiro@gmail.com Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Christopher Mosteiro 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.

Christopher Mosteiro
Signature

Christopher Mosteiro
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, _____ (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: 24-46-23-W3-0030A.0050

Property Address: 923 Third Street, Fort 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: Matanzas View

Book: 09 Page: 40 Unit: _____ Block: A Lot(s): 5

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) 50 feet
Depth (please provide an average width if irregular in shape) 80 feet
Frontage on street: 50 feet. Frontage on waterbody: _____ feet
Total land area: 4,000 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Coming over the Sky Bridge, take a right to head north. Take the first Right on to
Old San Carlos then Left on Third Street. The property is the third house on the right

☒ 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 |



Case# _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name: Mosteiro Residence
Authorized Applicant: Christopher Mosteiro
LEOPA STRAP Number(s): 24-46-23-W3-0030A.0050

Current Property Status:
Current Zoning: RC
Future Land Use Map (FLUM) Category: Mixed Residential
Platted Overlay? ☒ yes ☐ no FLUM Density Range:

Requested Action:

☐	Use of premises in the EC (Environmentally Critical) zoning district for:
☒	Use of premises in the <u>RC</u> zoning district for:
	Increasing number of Bedrooms under Post Disaster Buildback Policy

PART I Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

Section 34-3238. - Post-disaster buildback (2)(d)(4) states the number of
bedrooms may not exceed the legally documented number of bedrooms in the
dwelling unit prior to disaster. I am requesting a special exception to increase the
number of bedrooms from previous to Hurricane Ian. The home previous to the
storm was a duplex with 3 bedrooms.
I am requesting an increase of 3 bedrooms for a total of 6.

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
I am trying to build a more resilient property. This home has repeat flooding
and needs to be elevated. The home had a one bedroom dwelling unit that
was enclosed underneath 50% of the home previous to Ian. With the structure
being elevated, the entire space is now enclosed with the allowed increase
of square footage under the Post-disaster buildback policy. Since the home
was built in the 1950s, housing needs on Fort Myers Beach have changed.
Newer homes have more and larger and bedrooms than the old style cottages,
hence the need for more bedrooms to accommodate these changing preferences.

Granting the requested Special Exception could impact surrounding properties as follows:
Minimal impact expected. This property is on a weekly rental street in the downtown district. This is an extremely transient and high populated area. There is only one residential property between this and the downtown district. The area experiences frequent pedestrian traffic to the marina. Directly across the street is Manatee Bay Inn which has several rental units. We are also expecting the redevelopment of the Moss Marina
Arches Bayfront project to have a large impact on the neighborhood
and I am requesting more bedrooms to keep up with area development.
This is an owner-occupied property, the increased bedrooms will not create additional noise, traffic congestion, or other nuisances in the neighborhood.

PART 2 Submittal Requirements

All applications for a special exception must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

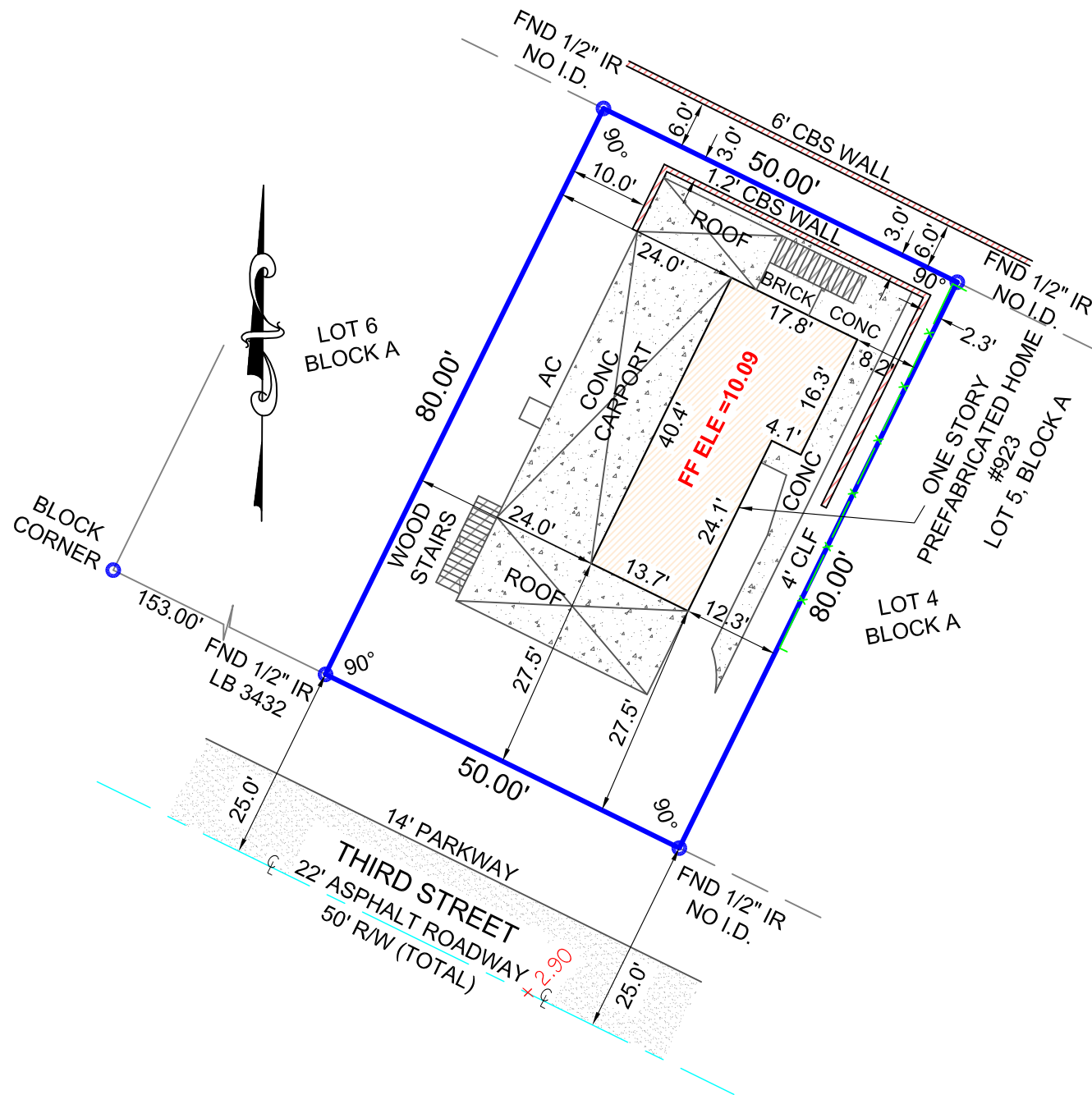
- Public Hearing Request Form
- Supplemental form PH-A
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening.
- Fee in the amount of \$3800.00/\$3300.00 for an amendment

For New Communication Towers:

- a. Lee County Application for Communication Tower
- b. Shared-Use Plan Agreement

A/C	= AIR CONDITIONER
AF	= ALUMINUM FENCE
BCR	= BROWARD COUNTY RECORDS
BM	= BENCHMARK
CB	= CATCH BASIN
C.M.E.	= CANAL MAINTENANCE EASEMENT
C/L	= CENTERLINE
CLF	= CHAIN LINK FENCE
CBS	= CONCRETE BLOCK STRUCTURE
CHATT	= CHATTAHOOCHEE
CONC	= CONCRETE
CO	= CLEAN OUT
D	= DELTA (CENTRAL ANGLE)
D.E.	= DRAINAGE EASEMENT
E	= EAST
EB	= ELECTRIC BOX
ELE	= ELEVATION
X 0.00'	= ELEVATION
EOP	= EDGE OF PAVEMENT
EOW	= EDGE OF WATER
FF	= FINISHED FLOOR
FDH	= FOUND DRILLHOLE
FH	= FIRE HYDRANT
FN	= FOUND NAIL
FND	= FOUND
IP	= IRON PIPE
IR	= IRON ROD
INV	= INVERT
L	= ARC LENGTH
LP	= LIGHT POLE
L.M.E.	= LAKE MAINTENANCE EASEMENT
N	= NORTH
N/A	= NO BASE FLOOD (FOR FLOOD ZONE X)
N&D	= NAIL & DISC
NO ID	= NO IDENTIFICATION
MF	= METAL FENCE
MH	= MAN HOLE
OH	= OVERHEAD CABLES
OR	= ORIGINAL RECORD BOOK
O/S	= OFFSET
PB	= PLAT BOOK
PBCR	= PALM BEACH COUNTY RECORDS
P.C.	= POINT OF CURVATURE
PG	= PAGE
PL	= PLANTER
P.O.B.	= POINT OF BEGINNING
P.O.C.	= POINT OF COMMENCEMENT
PP	= POOL PUMP
P&M	= PLAT AND MEASURED
PVCF	= POLYVINYL CHLORIDE FENCE
R	= RADIUS
R/W	= RIGHT OF WAY
S	= SOUTH
S/W	= SIDEWALK
SIR	= SET $\frac{1}{2}$ " IRON ROD #6677
SND	= SET NAIL & DISC
TYP	= TYPICAL
U.E.	= UTILITY EASEMENT
W	= WEST
WF	= WOOD FENCE
WM	= WATER METER
WV	= WATER VALVE

AT&T BOX UTILITY POLE



**LOT 5, BLOCK A, OF "MATANZAS VIEW", ACCORDING
TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK
9, PAGE 40, OF THE PUBLIC RECORDS OF LEE
COUNTY, FLORIDA.**

CHRISTOPHER C. MOSTEIRO

- (1.) ANGLES IF SHOWN ARE REFERENCED TO THE RECORD PLAT AND ARE AS MEASURED.**
- (2.) LEGAL DESCRIPTION PROVIDED BY CLIENT UNLESS OTHERWISE NOTED.**
- (3.) NO UNDERGROUND IMPROVEMENTS LOCATED EXCEPT AS SHOWN.**
- (4.) THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT THEREFOR THE ONLY SURVEY MATTERS SHOWN ARE PER THE RECORD PLAT. THERE MAY BE ADDITIONAL MATTERS OF RECORD, NOT SHOWN WHICH CAN BE FOUND IN THE PUBLIC RECORDS OF THE CORRESPONDING COUNTY OF RECORD.**
- (5.) THERE MAY BE EXISTING RECORDED EASEMENTS CONTAINED IN THE PUBLIC RECORDS NOT DEPICTED HEREON THAT ONLY A THOROUGH TITLE SEARCH WOULD UNCOVER.**
- (6.) SURVEY PURPOSE FOR ADDITION.**
- (7.) ELEVATIONS (IF SHOWN) ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88) UNLESS OTHERWISE NOTED. BENCHMARK REFERENCE: LEE COUNTY BENCHMARK #: L 801, ELEVATION = 4.04' (NGVD 1929)**

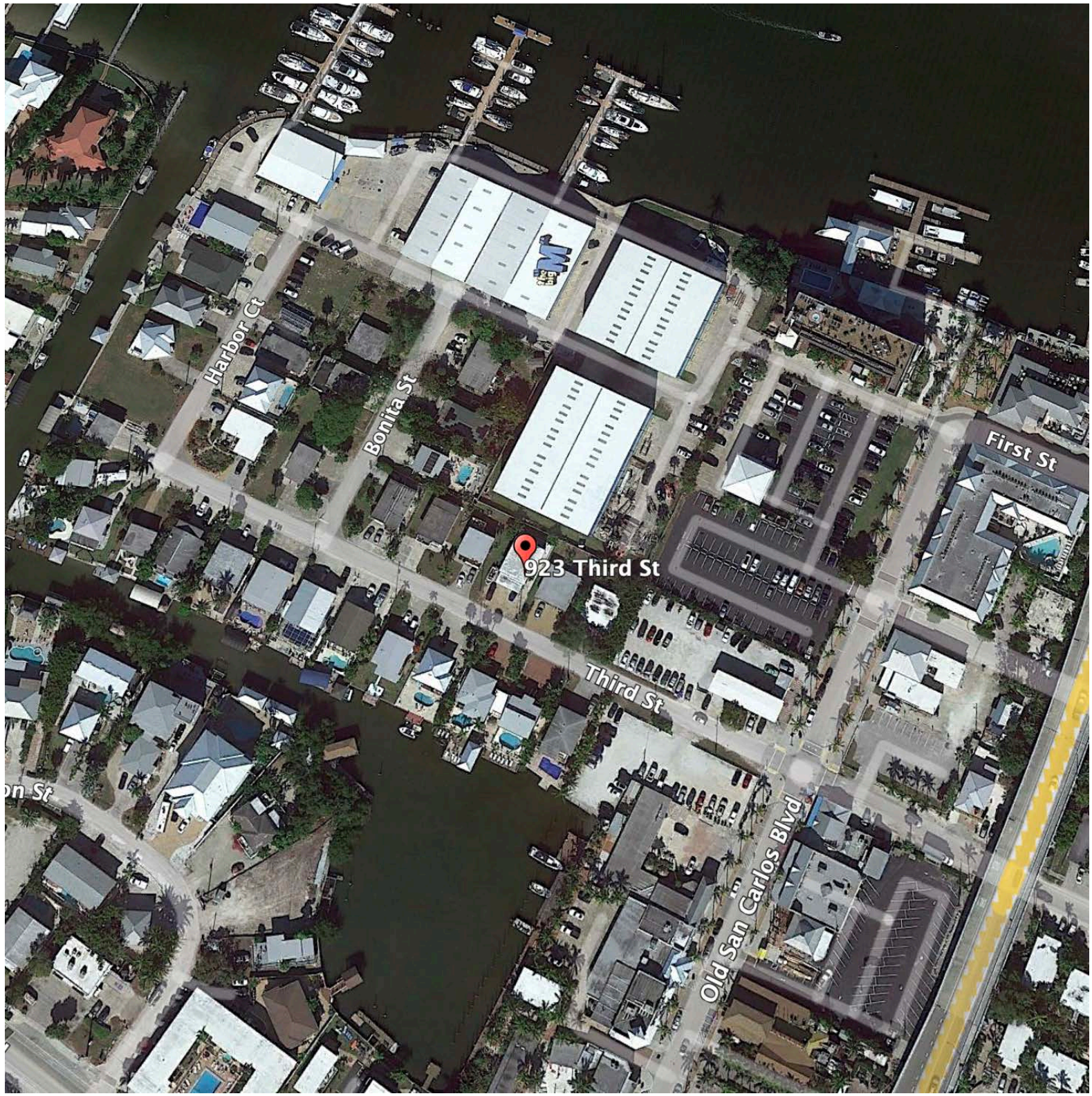
**923 THIRD STREET,
FORT MYERS, FL 33931**

FLOOD ZONE: AE	DATE OF SURVEY:		SCALE: 1" = 20'
BASE FLOOD: 11	FIELD LOCATION OF IMPROVEMENTS	01/14/2023	CADD: LJ
COMMUNITY #: 120673			CHECKED BY: EWD
PANEL & SUFFIX: 0554 G			INVOICE #: 23- 58164
DATE OF FIRM: 11/17/2022			SHEET # 1 OF 1

ERNEST W DUNCAN PSM., STATE OF FLORIDA
PROFESSIONAL SURVEYOR AND MAPPER LS 5182
**NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED
SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.**



**PROFESSIONAL
SURVEYORS AND MAPPERS**
LICENSE NO. 6677
(954) 777-4747
5400 SOUTH UNIVERSITY DRIVE
DAVIE, FLORIDA 33328 SUITE 216





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 Local Planning Agency 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 be sure to visit our website at WWW.FMBGOV.com to check for any updates or changes regarding the upcoming meeting.

TIME: 9 AM

DATE: LPA February 27, 2024, and Town Council March 18, 2024

CASE: SEZ20230293

ADDRESS: 923 Third St

APPLICANT: Christopher Mosteiro

REQUEST: The applicant is requesting a Special Exception to increase the number of residential bedrooms which may be developed while utilizing the Post Disaster-Buildback codes of the LDC sec. 34-3238(2)(e)(4)(a).

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 **Local Planning Agency** will review the application materials and hear testimony to make a **recommendation**. 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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Community Development Services - Planning Division
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Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency 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 be sure to visit our website at WWW.FMBGOV.com to check for any updates or changes regarding the upcoming meeting.

TIME: 9 AM

DATE: LPA February 27, 2024, and Town Council March 18, 2024

CASE: SEZ20230293

ADDRESS: 923 Third St

APPLICANT: Christopher Mosteiro

REQUEST: The applicant is requesting a Special Exception to increase the number of residential bedrooms which may be developed while utilizing the Post Disaster-Buildback codes of the LDC sec. 34-3238(2)(e)(4)(a).

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 **Local Planning Agency** will review the application materials and hear testimony to make a **recommendation**. 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
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»

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«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

1. **Request:**

Meeting Date: March 18, 2024

Selection of an individual to serve on the Lee County CDBG-DR Affordable Housing Development Evaluation Committee.

Why the action is necessary:

The Town needs a representative on the CDBG-DR Affordable Housing Development Evaluation Committee to ensure the Town is represented.

What the action accomplishes:

Fills the Town's seat on the CDBG-DR Affordable Housing Development Evaluation Committee and provides for Town representation.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Jason Freeman, Legislative
Liaison / Deputy Town Clerk

5. **Background:**

On March 5, 2024, the BoCC executed a resolution to form an Evaluation Committee for applications submitted in response to the CDBG-DR Affordable Housing Development NOFAs. This committee will include an appointment from each municipality.

1. This appointment may include municipal staff. Members shall not be elected officials of Lee County or any of its municipalities, and must be free from real or perceived conflict of interest.
2. The attached Lee County Advisory Committee Application should be completed in full by your selected nominee.
3. Applications should be submitted to recovery@leegov.com.

Lee County has requested to submit the Town nominee's application by Friday, May 24th for potential appointment during the BoCC's June 4, 2024 meeting.

The Town Manager is suggesting the nomination of Frank Kropacek to the Town Council for selection to represent the Town on this important

committee. Representatives are to ensure that communities are duly represented and review the proposals related to affordable housing.

Attachments:

Financial Impact:

6. **Alternative Action**

Select an alternate representative for the committee before the deadline.

7. **Management Recommendations:**

Appoint Frank Kropacek to serve on the committee or provide direction on the preferred appointment process.

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/12/2024
Approved - 3/13/2024
Approved - 3/13/2024
Final Approval - 3/13/2024

1. **Request:**

Meeting Date: March 18, 2024

Lien Reduction Request for CE18-0724

Why the action is necessary:

An application for a lien reduction was received from Dania Caballo Ortiz. The lien was recorded and attached to the property owned by Dania Carballo Ortiz and Daisy Garcia.

What the action accomplishes:

Lien reduction granted or denied

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

Frankie Kropacek, Operations &
Compliance Director

5. **Background:**

Based on the Town's records, the amount of the lien is \$286,075.00 as of March 1, 2024. The property was in non-compliance from February 29, 2020, to April 18, 2023 (1,144 days) at \$250 per day, plus a \$75.00 administrative fee.

Section 2-432(a)(2) of the Town of Fort Myers Beach Code of Ordinances provides if a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the property, the violator/property owner may apply for a reduction of the lien by providing a written application to the town manager. The application was received on October 17, 2023, a copy of which is attached as Exhibit A.

The Code requires the application to include specific information, which has been reviewed for sufficiency by Town Staff. Staff comments are underlined below:

a. A copy of the order imposing a lien upon the property: A copy of the lien recorded on October 7, 2020 as Instrument 2020000241617 is included in Exhibit A. The lien is based on an order by the Special Magistrate, who found a violation for no permit for a roof for property located at 268/270 Nature View Court, Fort Myers Beach, Florida, which was not remedied by the compliance date of February 29, 2020.

b. The code enforcement case number: CE 18-0724.

c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town Code: Based on information in CE 18-0724, the code violation for no roof permit was remedied and in compliance on April 18, 2023.

d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted: Financial hardship based on illness, loss of manpower and a pending mortgage default.

e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted: The owner requests forgiveness of 100% of the lien.

f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded: Combination of illness, lack of manpower, and financial constraints.

g. The amount of the reduction in penalty or fine requested by the violator/property owner: The owner requests forgiveness of 100% of the lien.

h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default: The property owner claims there is an existing mortgage with Regions Bank

in the amount of \$305,000, executed on August 8, 2013, which is currently in default \$46,000.

i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal: Additional documents in support of the applicant's request are included in Exhibit A; and

j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager or designee: The application was properly submitted.

Section 2-432(3) requires payment of a \$200 administrative fee, which was paid.

Section 2-432(4) requires confirmation of compliance prior to presentation of a request for a lien reduction to the Town Council. As stated above, the violation has been corrected.

Attachments:

1. Exhibit A Sec 2-432- Procedure to obtain reduction and-or release of a code enforcement lien
2. Exhibit A - Application for Lien Reduction Request
3. Exhibit A CE18-0724 Letter of Sufficiency and Affidavit of Compliance

Financial Impact:

6. Alternative Action

Approve lien reduction request.

7. Management Recommendations:

The management recommendation to the Town Council is to deny the request. Sec 2-432 of the Town of Fort Myers Beach Code of Ordinances identifies criteria for review of a request for a lien reduction and management's reasons for denial are highlighted below:

a. The gravity of the violation(s): The violation for unpermitted roof repairs created a risk to the welfare, life and/or safety of the community when the property was not in compliance.;

b. The amount of time it took the violator/property owner to come into compliance: It took the owner 1,144 days to come into compliance.;

c. The accrued amount of the code enforcement lien as compared to the market value of the property: The accrued fine in the amount of \$286,075.00 is nominal compared to the market value of the property, which is actively being marketed for sale for \$1,599,900.;

d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action; Per the application, there is a mortgage on the property where \$341,000.00, including the amount in default, is owed.;

e. Any previous code violation(s) of applicant/owner; This particular property owner also has 2 other violations where there have been liens filed against the property. CE18-0700, remodel without permit, is a violation that is still not in compliance and daily fines continue to accrue. CE20-0597, rentals for less than 1 week, is a violation now in compliance with an accrued fine of \$12,075.00. Furthermore, this lien is included in the pending foreclosure case initiated by the Town.

f. Consideration for the future or proposed use of the property for public purpose: N/A; and

g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida: This is the only property Dania Carballo Ortiz and Daisy Garcia own in Lee County.

8. Recommended Approval:

Kristin Schumacher, Flood Plain Supervisor

Created/Initiated - 3/13/2024

Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 3/13/2024
Approved - 3/13/2024
Approved - 3/13/2024
Final Approval - 3/13/2024

Sec. 2-432. - Procedure to obtain reduction and/or release of a code enforcement lien.

- (a) Where a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the land and/or property of the violator/property owner, such violator/property owner may apply for a release of such lien as follows:
- (1) Upon full payment by the violator/property owner of the fine or penalty imposed as a result of a code enforcement action, the town manager or designee is hereby authorized to execute and record, at the property owner's expense, a release of lien.
 - (2) Upon request for a reduction or forgiveness of a fine or penalty that constitutes a lien resulting from a code enforcement action, the violator/property owner shall submit a written application to the town manager or designee. The application shall include the following:
 - a. A copy of the order imposing a lien upon the property;
 - b. The code enforcement case number;
 - c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town Code;
 - d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted;
 - e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;
 - f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded;
 - g. The amount of the reduction in penalty or fine requested by the violator/property owner;
 - h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default;
 - i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal; and
 - j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager designee.
 - (3) The violator/property owner shall submit, at the time of application, an application fee in the amount of \$200.00 to reimburse the town for its administrative costs associated with handling the application and recording the order imposing a penalty or fine and the requested release of lien. The application cost is non-refundable, without regard to the final disposition of the application for reduction, forgiveness and release of lien.

- (4) Upon receipt of the application for release of lien and the payment provided above, the town manager, or designee, shall confirm through the code enforcement division that the violation which resulted in the order imposing the penalty or fine has been brought into full compliance.
- (5) The town manager, or designee, shall then review and consider the status of the application for release of lien with respect to the following:
 - a. If a property owner acquired the property after the code enforcement lien was recorded, a waiver or reduction of lien may not be granted because the lien should have been identified and satisfied by the property owner at the time of purchase of the property.
 - b. If a title insurance policy was issued at the time the property was purchased and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien may not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction or waiver would place the town in the position of indemnifying the title insurer against its losses, which losses are the result of negligent examination of title by the title insurer.
 - c. A request for waiver or reduction in lien may not be granted if the town council has previously reduced the amount of the lien. This statement applies whether or not the request is received from the original applicant for reduction or from a subsequent applicant who acquired the property.
- (6) If the town manager or designee determines that the request falls within any one of the above factual situations, the town manager or designee shall issue a written denial of the request for reduction or forgiveness. If the applicant desires to appeal the town manager's decision to the town council, the applicant may do so by filing a written appeal with the town manager stating the reason(s) why the town council should make an exception to its established guidelines and consider a reduction or forgiveness of the lien. Upon filing of a proper appeal, the town manager shall present the information to the town council at a regular meeting for their consideration and final determination.
- (7) If the town manager or designee determines that the request does not fall within any of the above factual situations and therefore qualifies for possible reduction or forgiveness, the town manager or designee shall review the request further. The town manager or designee, in formulating a recommendation on whether to reduce the amount of the lien or forgive the lien entirely, shall consider the following factors:
 - a. The gravity of the violation(s);
 - b. The amount of time it took the violator/property owner to come into compliance;
 - c. The accrued amount of the code enforcement lien as compared to the market value of the property;

- d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action;
 - e. Any previous code violation(s) of applicant/owner;
 - f. Consideration for the future or proposed use of the property for public purpose; and
 - g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida.
- (8) The town manager or designee shall place the application for satisfaction or release of lien upon the agenda of a regularly scheduled town council meeting. The town council may take action based solely upon the sworn application, recommendation of the town manager or designee and the applicant shall have opportunity to address the town council as to the factors he or she believes warrant reduction or waiver of lien in considering the application for satisfaction or release of lien.
- (9) The town council may reduce the amount of the lien, waive the full amount of the lien or continue the lien in its full amount and may accept, modify or reject the recommendations of the town manager or designee.
- (10) Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the town council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall be come null and void and the full amount of the lien shall be due and payable.
- (11) When a lien is satisfied as a result of full payment, reduced payment or waiver as ordered by the town council, the town shall record the satisfaction/release of lien in the public records of Lee County, Florida and provide a copy to the property owner.

(Ord. No. 12-05, § 3, 6-18-2012)



Town of Fort Myers Beach

CODE ENFORCEMENT LIEN REDUCTION REQUEST APPLICATION (ord. 12-05)

A copy of the order imposing the lien must be submitted with this application. A non-refundable \$200.00 application fee will be due at the time the application is submitted.

Code Enforcement Case Number: CE18-0724

Date: October 8, 2023

Date Subject Property was brought into Compliance with Town Code: as per FMB Attorney in progress

Reasoning for reduction (factual):

Due to significant financial hardship following devastation of Ian. Financial hardship has been compounded with limitation of insurance pay out which has left me with considerable strain on my already limited financial resources. The permits are attached for the remodel and roof. I am in urgent need to close on the property sale on November 9, 2023 to pay Regions mrtg. and this fine as well as all the debt I have incurred since the hurricane to survive and to fix the property up to code.

Reasoning compliance not accomplished by time lien was recorded:

combination of illness, lack of manpower and financial constraints compounded the challenges faced in achieving compliance. I relied on help from friends and family who left me in worse situation, these factors lead to delays and a complete halt in compliance activities resulting in noncompliance being recorded before necessary action could be completed.

Amount of reduction requested: 100% reduction and balance to be paid immediately to City

Outstanding Mortgage Information. Please include date(s) recorded and whether currently in default. Regions Mortgage amount due \$305,000.00 plus ten months default as of today \$46,000.00 and legal fees

Recorded 08.08.2013 - currently in default

All documents or other evidence that supports reduction request must be included in the application.

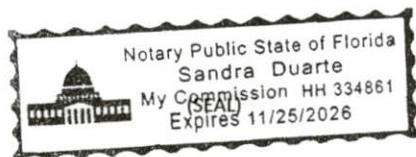
Applicant Signature: [Signature]

Date: October 8, 2023

Applicant Printed Name: Dania Carballo Ortiz

**STATE OF FLORIDA)
COUNTY OF LEE)**

Subscribed and sworn to (or affirmed) before me this 12 day of Oct., 2023, by Dania Iraida Carballo.



[Signature]
Notary Public Signature

Sandra Duarte
Notary Printed Name

Personally Known or Produced Identification ✓

Type of Identification Produced: FDL 72-806-c

My Commission Expires: 11/25/26

Town of Fort Myers Beach

OCT 17 2023

Received by: _____

Received by:

← Go Back Permit #233238

Permit Information:

Permit Date:	04/18/2023	Scope of Work:	shingle reroof
Sub Type:	Roof/Reroof/Roofover	Project Cost:	9,000
Type of Construction:		Square Feet:	1,800
Type of Occupancy / Use:	Residential	Issued Date:	04/18/2023
Contractor Business Name/Applicant:	Triple J Roofing Inc. DBA 3 J Construction	Expiration Date:	10/18/2023
Contractor/Applicant Email:	Jacosta@3jroofing.com	Finalized Date:	
Contractor/Applicant Phone #:	3052837081	Assigned To:	
Current Use:	r	Status:	ISSUED
Proposed Use:	r		

Contractors:

Triple J Roofing Inc. DBA 3 J Construction - Certified Roofing, FL 33173
Primary Contact: Joe Acosta

Property Information:

Parcel #: 204624W4017000050
268/270 NATURE VIEW CT
FORT MYERS BEACH, 33931

Inspections:

Roof - Roof Inspect Affidavit- need prior to scheduling 501 Roof Dry In	Open -
Scheduled Date:	Completed Date:

Roof - 501 Roof Dry In	Open -
Scheduled Date:	Completed Date:

Roof - 503 Roof Final	Open -
Scheduled Date:	Completed Date:

Plan Reviews:

04/18/2023 - Review Flood Date: 04/18/2023	DONE - Andrew Garry Completed Date: 04/18/2023

04/18/2023 - Review FMB Application Date: 04/18/2023	DONE - Andrew Garry Completed Date: 04/18/2023

04/18/2023 - Notice of Commencement Date:	REQUIRED - Completed Date:

Fees:

* MISC- DBPR & DCA Admin Fees:	\$4.00 - Paid
RES - Roof, Reroof, Roofover, Insulated Pan Roof (2020):	\$300.00 - Paid
Total Fees:	\$304.00

Amount Due: **\$0.00**

Payments:

<i>Date:</i>	<i>Amount:</i>	<i>Type:</i>	<i>Paid By:</i>
04/18/2023	\$304.00		Joe Acosta

Amount Paid: **\$304.00**

Letters:

04/18/2023 - Building Permit [Print](#)

Uploaded Files:

- [noa.pdf](#)
- [_high_velocity_hurricane_zone_uniform_permit_application_.pdf](#)
- [_permit_application.pdf](#)

[Accessibility:](#)

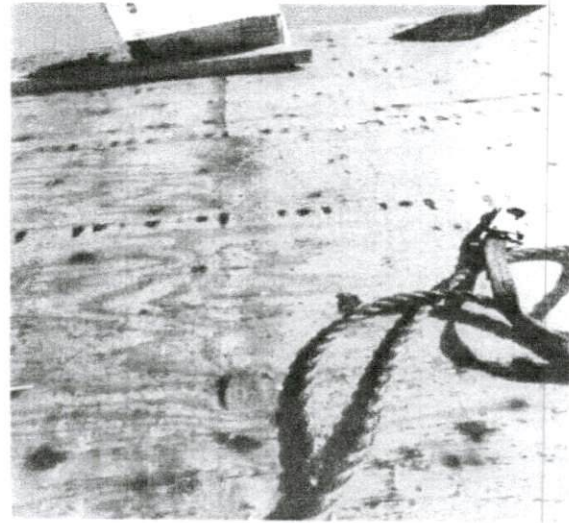
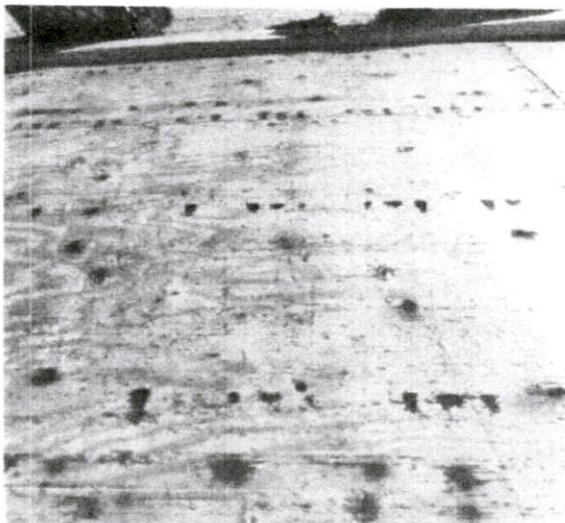
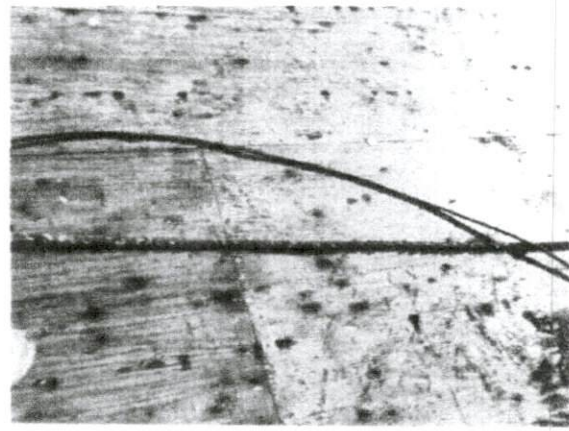
YP BEST SERVICES

12170 SW 128th Ct. Ste 101 Miami, FL 33186

Office: (786) 231-8143 Cell: (786) 231-8143

Email: ypbestservices@gmail.com

Laboratory Certification No. 22-0120.06



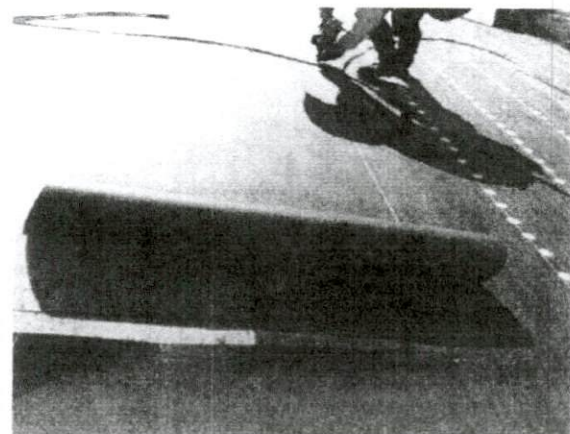
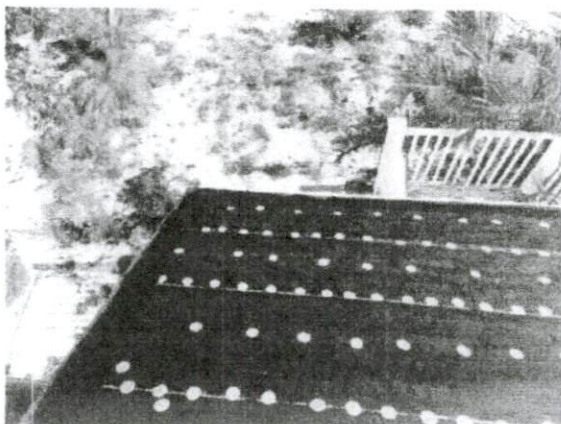
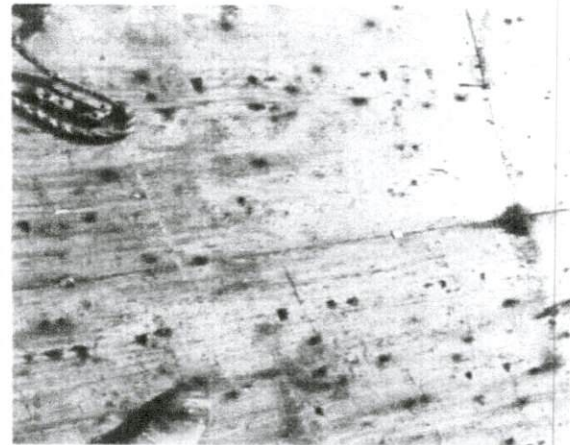
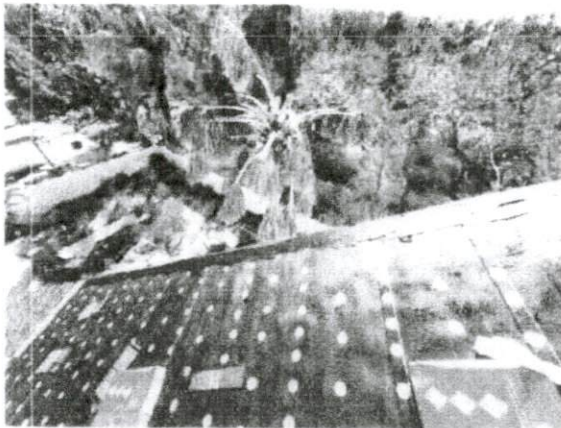
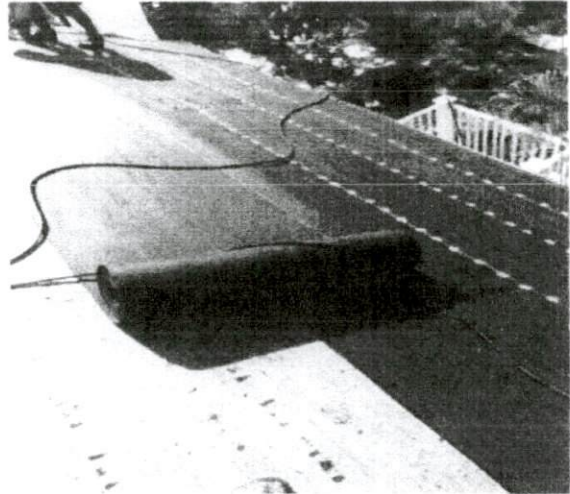
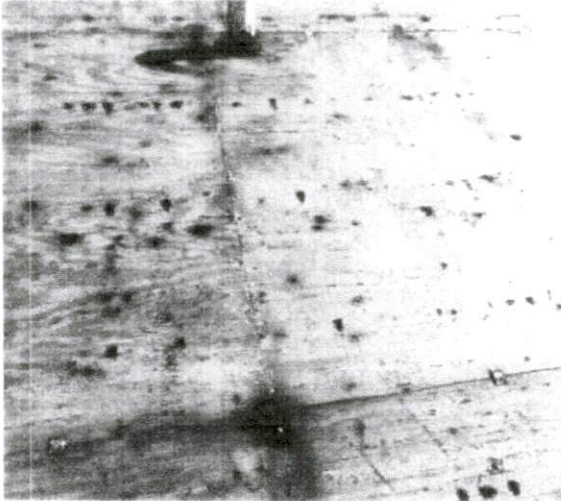
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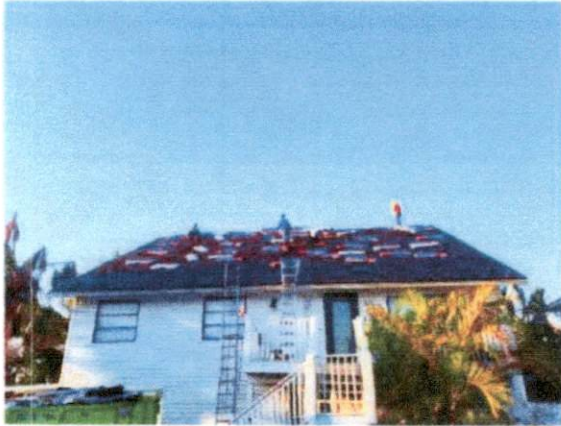
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YR BEST SERVICES
13430 SW 18th Ct, Miami, FL 33187
Office (305) 271-8143, Fax (305) 271-8144
www.yrbest.com
Laboratory Certification No. 23-0120-00



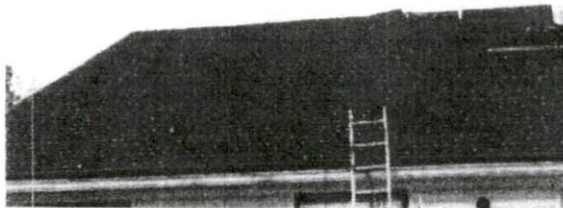
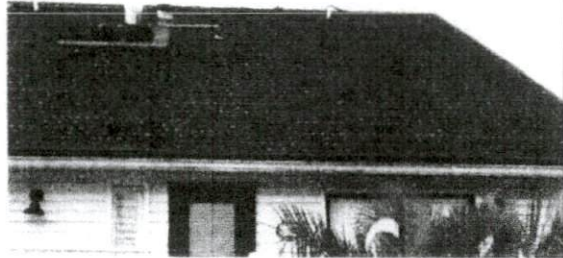
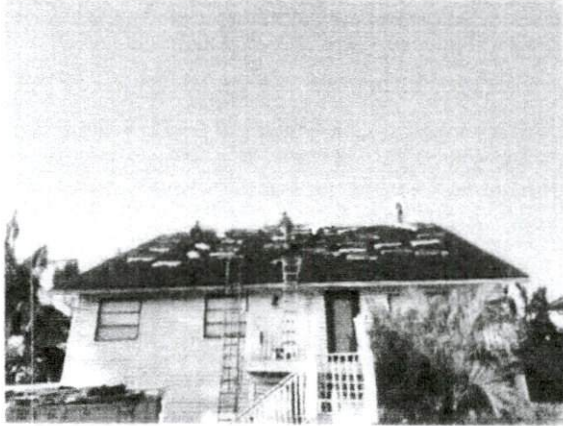
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Email: ypbestservices@gmail.com
Laboratory Certification No. 22-0120.06

TO: Building Department Official Contractor: Triple J Roofing
FROM: Alaym Aguilar, P.E. Permit #:
FL Reg. No. 92154
DATE: June 30, 2023
RE: 268-270 Nature View Ct Fort Myers Beach, FL 33931

Dear Building official:

Our firm has been retained to perform the Shingle Inspection for the above mentioned project. A representative from our office inspected the job site during installation at the above referenced location, and the following are the findings:

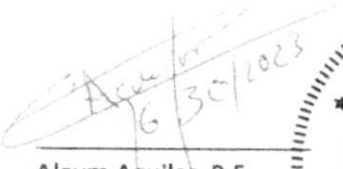
Roof system: Gable Roof

Based on the visual inspection we hereby certify that was used Base #30 underlayment nailed on laps @4" O.C at corners, 6" O.C at perimeter and @7" O.C in field with 1-1/4" ring shank nails through 1-5/8" tin caps 3" side lap and 6" end lap. Reflect Drip Metal 3"x3" galvanized 26 ga was installed with 1-1/4" ring shank nails @ 4" O.C. There were 6 nails per shingle starting 1" from edge of shingle and ending with the 6 nail placed 1" from edge of shingle.

"This report is not to be construed as warranty on the roof. To the best of my knowledge and ability, this report represents an accurate appraisal of the present condition of the "inspected part of the building" based upon careful evaluation of observed conditions, to the extent reasonably possible."

I hereby certify that the installation of the roof framing system referred above complies with the minimum requirements as set forth by **Florida Building Code 2020 (7th Ed)**.

Should you have any questions or need additional information, please do not hesitate to contact me.
Sincerely,


Alaym Aguilar, P.E.
Lic. No. 92154



IN THE CIRCUIT COURT OF THE 20TH
CIRCUIT, IN AND FOR LEE COUNTY,
FLORIDA

CASE NO. _____

TOWN OF FORT MYERS BEACH,
FLORIDA

Plaintiff,

vs.

DANIA CARBALLO ORTIZ and
DAISY GARCIA

Defendants.

_____ /

COMPLAINT TO FORECLOSE MUNICIPAL LIENS

Plaintiff, Town of Fort Myers Beach, a Florida municipal corporation (the "Town"), by and through its undersigned counsel, sues Defendants, Dania Carballo Ortiz, and Daisy Garcia, and alleges:

SUBJECT MATTER, PARTIES, AND VENUE

1. This is an action to foreclose three (3) municipal code enforcement liens on real property located in Lee County, Florida.

2. The Town is authorized by the State of Florida to create a code enforcement board or code enforcement special magistrate position, establish a code enforcement system, and hold hearings and assess fines against violators to promote, protect, and improve the health, safety, and welfare of the business owners, residents, and visitors of the Town. *See* Chapter 162, Florida Statutes.

3. The Town is a Florida municipal corporation located in Lee County, Florida, and organized under the laws of the State of Florida.

4. Defendants reside in Miami-Dade County, Florida, and are otherwise *sui juris*.
5. Venue is proper because the real property at issue is located in Lee County, Florida, and the causes of action set forth herein arose or accrued in Lee County.
6. This Court has subject matter jurisdiction over this action pursuant to Fla. Stat. § 26.012 and Fla. Stat. § 162.30.
7. This Court has personal jurisdiction over Defendants under Fla. Stat. § 48.193(2) because Defendants are Florida residents owning real property in the state.
8. Defendants own and possess certain real property in Lee County, Florida, located at 268/270 Nature View Court, Fort Myers Beach, Florida 33931 (the "Property"). The Property is legally described as follows:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, and the Public Records of Lee County, Florida.
9. Defendants obtained ownership of the Property on August 8, 2013, through a Warranty Deed recorded on August 12, 2013 at Official Records Instrument No. 2013000185758 of the Public Records of Lee County, Florida. A copy of the Deed is attached hereto as **Exhibit "A"** and incorporated herein by reference.
10. The Property is not a homestead under the laws of the State of Florida.
11. All conditions precedent to the bringing of this action has been performed, have been waived, have been executed, or have occurred.
12. The Town is obligated to pay its attorneys a reasonable fee for their services and Defendants are responsible for the liens and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances ("Town Code"), Article V, Sec. 2-427(d).

COUNT I
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE18-0700)

13. The Town repeats and realleges Paragraphs 1 through 12 of the Complaint as if fully set forth herein.

14. This is an action to foreclose on a municipal code enforcement lien entered against the Property under Case No. CE18-0700.

15. On or about August 15, 2018, the Town issued a Notice of Violation to Defendants for remodeling the Property, without permits, after it suffered significant fire damage, in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1, which states: "Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit." A copy of the Notice of Violation is attached hereto as **Exhibit "B"** and incorporated herein by reference.

16. The Notice of Violation specified that Defendants were required to correct the violations by a certain date, but Defendants failed or refused to do so.

17. As a result of Defendants' failure or refusal to correct the violations, the Town scheduled a code compliance hearing for January 30, 2020, and served Defendants with a notice of hearing for same.

18. On January 30, 2020, a Special Magistrate for the Town held a duly noticed public hearing related to the violations. Defendants appeared at the hearing and had the

opportunity to present testimony, evidence, and arguments in their defense.

19. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the Property was remodeled without permits in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1 of same.

20. The Special Magistrate ordered that the "Property shall not be occupied and [Defendants are] ordered to immediately cease rentals due to possible life safety hazards," that Defendants must correct the violation by "obtaining a permit for remodel," and, if the violations were not corrected within 30 days, a fine of \$250.00 per day would be imposed and continue to accrue against Defendants and the Property until the Property was brought into compliance.

21. The Code Enforcement Order was entered on January 30, 2020, executed on February 6, 2020, and a copy was recorded on February 18, 2020, at Official Records Instrument No. 2020000042776 in the public records of Lee County, Florida. A copy of the Code Enforcement Order is attached hereto as **Exhibit "C"** and incorporated herein by reference.

22. Despite the Special Magistrate's orders, Defendants continued to fail or refuse to obtain a permit for the remodel or otherwise bring the Property into compliance.

23. Due to Defendants' continued failure or refusal to bring the Property into compliance or otherwise comply with the Code Enforcement Order, the Town scheduled a hearing for September 17, 2020, to impose a fine and lien against the Property and served Defendants with a notice of hearing for same.

24. On September 17, 2020, a Special Magistrate for the Town held a duly noticed public hearing to consider entering an order imposing a fine and lien against the Property.

Defendants again had the opportunity to appear before the Special Magistrate to present testimony, evidence, and arguments in their defense, but failed to appear.

25. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order Imposing Lien, finding that Defendants failed to comply with the Code Enforcement Order, failed to pay the accrued fine of \$56,000.00, and failed to pay the administrative fee of \$75.00. The Special Magistrate certified that a fine of \$56,075.00 had accrued through September 17, 2020, and that the fine would continue to accrue in the amount of \$250.00 per day until the Property was brought into compliance.

26. The Code Enforcement Order Imposing Lien was entered on September 17, 2020, executed on September 30, 2020, and recorded on October 7, 2020, at Official Records Instrument No. 2020000241616 in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing Lien is attached hereto as **Exhibit “D”** and incorporated herein by reference.

27. Defendants were afforded 30 days to appeal the Code Enforcement Order and the Code Enforcement Order Imposing Lien, from the respective dates of execution, but failed to do so. Accordingly, the Code Enforcement Order and Code Enforcement Order Imposing Lien are final, non-appealable orders.

28. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as “Lien 1,” constitutes a valid and enforceable lien against the Property and any other real or personal property owned by Defendants.

29. Through August 12, 2022, the Lien 1 secures a total of \$229,575.00 in accrued fines, which continue to accrue at \$250.00 per day.

COUNT II
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE18-0724)

33. The Town repeats and realleges Paragraphs 1 through 12 of the Complaint.

34. This is an action to foreclose on a municipal code enforcement lien entered against the Property under Case No. CE18-0724.

35. On or about August 15, 2018, the Town issued a Notice of Violation to Defendants for repairing or replacing the roof for a building at the Property, without permits, after the Property suffered significant fire damage, in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1, which states: "Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit." A copy of the Notice of Violation is attached hereto as **Exhibit "E"** and incorporated herein by reference.

36. The Notice of Violation specified that Defendants were required to correct the violations by a certain date, but Defendants failed or refused to do so.

37. As a result of Defendants' failure or refusal to correct the violations, the Town scheduled a code compliance hearing for January 30, 2020, and served Defendants with a notice of hearing for same.

38. On January 30, 2020, a Special Magistrate for the Town held a duly noticed public hearing related to the violations. Defendants appeared at the hearing and had the

opportunity to present testimony, evidence, and arguments in their defense.

39. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the roof was repaired or replaced without permits and the Property was in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1.

40. The Special Magistrate further ordered that the "Property shall not be occupied and [Defendants are] ordered to immediately cease rentals due to possible life safety hazards," that Defendants must correct the violation by "obtaining a permit for roof," and, if the violations were not corrected within 30 days, a fine of \$250.00 per day would be imposed and continue to accrue against Defendants and the Property until the Property was brought into compliance.

41. The Code Enforcement Order was entered on January 30, 2020, executed on February 6, 2020, and a copy was recorded on February 18, 2020, at Official Records Instrument No. 2020000042777 in the public records of Lee County, Florida. A copy of the Code Enforcement Order is attached hereto as **Exhibit "F"** and incorporated herein by reference.

42. Despite the Special Magistrate's orders, Defendants continued to fail or refuse to obtain a permit for the roof or otherwise bring the Property into compliance.

43. Due to Defendants' continued failure or refusal to bring the Property into compliance or otherwise comply with the Code Enforcement Order, the Town scheduled a hearing for September 17, 2020, to impose a fine and lien against the Property and served Defendants with a notice of hearing for same.

44. On September 17, 2020, a Special Magistrate for the Town held a duly noticed public hearing to consider entering an order imposing a fine and lien against the Property.

Defendants again had the opportunity to appear before the Special Magistrate to present testimony, evidence, and arguments in their defense, but failed to appear.

45. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order Imposing Lien, finding that Defendants failed to comply with the Code Enforcement Order, failed to pay the accrued fine of \$56,000.00, and failed to pay the administrative fee of \$75.00. The Special Magistrate certified that a fine of \$56,075.00 had accrued through September 17, 2020, and that the fine would continue to accrue in the amount of \$250.00 per day until the Property was brought into compliance.

46. The Code Enforcement Order Imposing Lien was entered on September 17, 2020, executed on September 30, 2020, and recorded on October 7, 2020, at Official Records Instrument No. 2020000241617, in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing is attached hereto as **Exhibit “G”** and incorporated herein by reference.

47. Defendants were afforded 30 days to appeal the Code Enforcement Order and the Code Enforcement Order Imposing Lien, from the respective dates of execution, but failed to do so. Accordingly, the Code Enforcement Order and Code Enforcement Order Imposing Lien are final, non-appealable orders.

48. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as “Lien 2,” constitutes a valid and enforceable lien against the Property and any other real or personal property owned by Defendants.

49. Through August 12, 2022, the Lien 2 secures a total of \$229,575.00 in accrued fines, which continue to accrue at \$250.00 per day.

30. As of the date of this Complaint, the Property has not been brought into compliance.

31. The amount due for Lien 1 remains wholly unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining necessary parties to this action.

32. At the meeting of the Town Council on April 18, 2022, the Town Council authorized the undersigned counsel to enforce and foreclose on Lien 1.

WHEREFORE, the Town respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the Property for the full amount due pursuant to Lien 1, including the principal, all accrued interest, attorney's fees and costs, and other expenses, and if such sums are not paid within the time set by the Court, that the Property be sold to satisfy the amounts owed to the Town;

(b) Order that Defendants, and all persons, partnerships, corporations, or entities claiming by, through or under the Defendants since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the Property;

(c) That the proceeds of any sale resulting here from, if any, be applied to reduce the indebtedness due under Lien 1;

(d) Order that Defendants are responsible for Lien 1 and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Such other and further relief as the Court deems just and proper.

50. As of the date of this Complaint, the Property has not been brought into compliance.

51. The amount due for Lien 2 remains wholly unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining necessary parties to this action.

52. At the meeting of the Town Council on April 18, 2022, the Town Council authorized the undersigned counsel to enforce and foreclose on Lien 2.

WHEREFORE, the Town respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the Property for the full amount due pursuant to Lien 2, including the principal, all accrued interest, attorney's fees and costs, and other expenses, and if such sums are not paid within the time set by the Court, that the Property be sold to satisfy the amounts owed to the Town;

(b) Order that Defendants, and all persons, partnerships, corporations, or entities claiming by, through or under the Defendants since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the Property;

(c) That the proceeds of any sale resulting here from, if any, be applied to reduce the indebtedness due under the Lien 2;

(d) Order that Defendants are responsible for Lien 2 and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Such other and further relief as the Court deems just and proper.

COUNT III
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE20-0597)

53. Plaintiff repeats and realleges Paragraphs 1 through 12 of the Complaint.

54. This is an action to foreclose on a municipal code enforcement lien entered against the Property under Case No. CE18-0700.

55. On or about August 26, 2020, the Town issued a Notice of Violation to Defendants for related to short-term rentals at the Property in violation of Section 34-2391 of Town's Land Development Code, which "restricts the rental of any permitted dwelling unit in certain zoning districts to a single-family during any one-month period, with a minimum stay of one week" A copy of the Notice of Violation is attached hereto as **Exhibit "H"** and incorporated herein by reference.

56. The Notice of Violation specified that Defendants were required to correct the violations by a certain date, but Defendants failed or refused to do so.

57. As a result of Defendants' failure or refusal to correct the violations, the Town scheduled a code compliance hearing for September 17, 2020, and served Defendants with a notice of hearing for same.

58. On September 17, 2020, a Special Magistrate for the Town held a duly noticed public hearing related to the violations. Although they had the opportunity to attend the hearing and present testimony, evidence, and arguments in their defense, Defendants failed to appear.

59. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the Defendants were renting the property for durations of less than one-week and were repeat violators of Section 34-2391 of the Town's Land Development Code.

60. The Special Magistrate further ordered that Defendants “discontinue rentals immediately until permitting issues are resolved, once resolved, adhere to RC Zoning Regulations by renting to a single-family for a minimum stay of one week,” assessed a fine in the amount \$6,000, assessed administrative costs and fees in the amount of \$75.00, and ordered that fines of \$500.00 per occurrence would be assessed for continued violations.

61. The Code Enforcement Order was originally entered on September 17, 2020, executed on September 30, 2020, and recorded on October 7, 2020, at Official Records Instrument No. 2020000241612 in the public records of Lee County, Florida. The Order was later amended by that certain Amended Code Enforcement Order, entered on September 17, 2020, executed on March 24, 2021, and recorded on March 30, 2021, at Official Records Instrument No. 2021000098239 in the public records of Lee County, Florida. A copy of the Amended Code Enforcement Order is attached hereto as **Exhibit “I”** and incorporated herein by reference.

62. Despite the Special Magistrate’s orders, Defendants continued to fail or refuse to cease short-term rentals for durations of less than one-week and continued to rent the Property prior to resolving permitting issues (as discussed in Counts I and II) in violation of the Amended Code Enforcement Order.

63. Due to Defendants’ continued failure or refusal to bring the Property into compliance or otherwise comply with the Amended Code Enforcement Order, the Town scheduled a hearing for May 20, 2021, to impose a fine and lien against the Property and served Defendants with a notice of hearing for same.

64. On May 20, 2021, a Special Magistrate for the Town held a duly noticed public hearing to consider entering an order imposing a fine and lien against the Property. Defendants again had the opportunity to appear before the Special Magistrate to present testimony, evidence,

and arguments in their defense, but failed to appear.

65. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order Imposing Lien, finding that Defendants failed to comply with the Code Enforcement Order, failed to pay the applicable fines, and continued to violate Section 34-2391 of the Town's Land Development Code. The Special Magistrate certified that a fine of \$12,075.00 had accrued through May 20, 2021.

66. The Code Enforcement Order Imposing Lien was entered on May 20, 2021, executed on May 26, 2021, and recorded on June 2, 2021, at Official Records Instrument No. 2021000182144 in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing Lien is attached hereto as **Exhibit "J"** and incorporated herein by reference.

67. Defendants were afforded 30 days to appeal the Code Enforcement Order, the Amended Code Enforcement Order, and the Code Enforcement Order Imposing Lien, from the respective dates of execution, but failed to do so. Accordingly, the Code Enforcement Order, Amended Code Enforcement Order, and Code Enforcement Order Imposing Lien are final, non-appealable orders.

68. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as "Lien 3," constitutes a valid and enforceable lien against the Property and any other real or personal property owned by Defendants.

69. Lien 3 secures a total of \$12,075.00 in accrued fines.

70. As of the date of this Complaint, the Property has not been brought into compliance.

71. The amount due for Lien 3 remains wholly unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining

necessary parties to this action.

72. At the meeting of the Town Council on April 18, 2022, the Town Council authorized the undersigned to enforce and foreclose on Lien 3.

WHEREFORE, the Town respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the Property for the full amount due pursuant to Lien 3, including the principal, all accrued interest, attorney's fees and costs, and other expenses, and if such sums are not paid within the time set by the Court, that the Property be sold to satisfy the amounts owed to the Town;

(b) Order that Defendants, and all persons, partnerships, corporations or entities claiming by, through, or under the Defendants since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the Property;

(c) That the proceeds of any sale resulting herefrom, if any, be applied to reduce the indebtedness due under the Lien 3;

(d) Order that Defendants are responsible for Lien 3 and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOX ROTHSCHILD LLP

Attorneys for Plaintiff

One Biscayne Tower, Suite 2750

2 South Biscayne Boulevard

Miami, Florida 33131

Telephone: 305 442-6547

By: /s/ John R. Herin

JOHN R. HERIN, JR.
Florida Bar No.: 907928
jherin@foxrothschild.com
Sec.Email:jpoli@foxrothschild.com
VICTOR SANABRIA, Esq.
Florida Bar No.: 125292
Vsanabria@foxrothschild.com
BROOKE STEWART, Esq.
Florida Bar No.: 1032231
BStewart@Foxrothschild.com

EXHIBIT A

Prepared by and Return Recorded Original to:

Charles R. Meador, Jr., Attorney at Law
2085 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 463-6619
Facsimile: (239) 463-6454

Property Appraiser Parcel I.D. No. 20-46-24-W4-01700.0050
Grantee Taxpayer I.D. No. _____
Documentary Stamp Tax on Transfer: \$2520

Reserved For Recorder

(STATUTORY FORM - Section 689.02, F.S.)

WARRANTY DEED

THIS WARRANTY DEED, made this 8 day of August, A.D.
2013, between ALVA T. ARGO and DEBORAH A. ARGO, Husband and wife, whose post
office address is 270 Nature View Court, Fort Myers Beach, FL 33931, hereinafter called
Grantor, and DANIA CARBALLO ORTIZ and DAISY GARCIA, whose post office address is
129 Palmetto Drive, Miami Springs, FL 33166, hereinafter called Grantee.

WITNESSETH, That said Grantor, for and in consideration of the sum of Ten and
No/100's Dollars (\$10.00), and other good and valuable consideration, to said Grantor in hand
paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and
sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land,
situate, lying and being in Lee County, Florida, to-wit:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in
Plat Book 30, at Pages 102 and 103, of the Public Records of Lee County, Florida.

SUBJECT TO easements, restrictions and reservations of record and taxes for the current
and subsequent years.

and said Grantor does hereby fully warrant the title to said land, and will defend the same against
lawful claims of all persons whomsoever.

*"Grantor" and "Grantee" are used for singular and plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and
year first above written.

Reserved For Recorder

Signed in the presence of:

Charles R. Meador
 #1 Witness Name - print or type

Deborah Miller
 #2 Witness Name - print or type

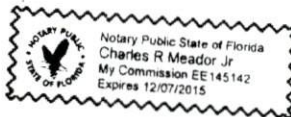
Alva T. Argo (SEAL)
 ALVA T. ARGO

Deborah A. Argo (SEAL)
 DEBORAH A. ARGO

STATE OF Florida
 COUNTY OF Lee

EXECUTION OF the foregoing instrument was acknowledged before me this 8
 day of August, 2013, by ALVA T. ARGO and DEBORAH A. ARGO,
 Husband and wife, who is (CHECK ONE OF THE FOLLOWING AS APPLICABLE) []
 personally known to me, or ☒ who has produced (Florida Driver License) as
 identification.

NOTARY PUBLIC - SIGNATURE ABOVE
 NOTARY NAME - Charles R. Meador Jr.
 COMMISSION NO. - _____
 COMMISSION EXP. DATE - _____
 (Notary Name/Commission No./Exp. Date - typed or printed)



(Notary Seal)

EXHIBIT B



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

8/15/2018

ORTIZ DANIA CARBALLO + GARCIA
581 DE LEON DR
MIAMI SPRINGS, FL 33166

CASE NUMBER:	CE18-0700
CERTIFIED MAIL:	7018 0680 0000 1523 2722

SITE ADDRESS: **268/270 NATURE VIEW CT**
PARCEL STRAP NO: **204624W4017000050**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **8/13/2018** by Town of Fort Myers Beach Code Enforcement Officer **MOLLY JACOBS** indicates that the following items are a violation:

Work w/out Permit - Remodel

These items are a violation of the following Town Codes:

LDC Sec 6-111 The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law.

FBC 105.1 Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

You are hereby directed to abate or remedy these violations within 30 days of receipt of this notice.

***The violation(s) can be abated or corrected by taking the following actions:
Secure required permit and associated inspections.***



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

ONCE YOU HAVE ABATED OR CORRECTED THE VIOLATIONS, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED BY A CODE OFFICER TO VERIFY THAT THE VIOLATION(S) HAVE BEEN ABATED OR CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) abated and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 476-2467 for Molly Jacobs or (239) 218-4830 for Joe Kontomanolis if you have any questions concerning this Notice of Violation.

Respectfully,

MOLLY JACOBS

Code Enforcement Officer
Town of Fort Myers Beach

Received By: _____ Date: _____

EXHIBIT C

PARCEL #: 20-46-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0700

ORTIZ, DANIA CARBALLO + GARCIA, DAISY T/C,

Respondent.

CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on January 30, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz, present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 3

3. The NOV specified that Respondent was required to correct the violation by a specified amount of time, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and therefore, this case is properly before the Special Magistrate.
5. The following condition exists on the Property:

WORK WITHOUT PERMIT-REMODEL

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 6-111, Adopting FBC 105.1.
2. Based upon the competent substantial evidence presented at the hearing, the Special Magistrate of the Town of Fort Myers Beach has determined that this Order of Enforcement is hereby warranted.

C. ORDER/IMPOSITION OF FINE:

1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$75.00 in administrative costs and fees.
3. Property shall not be occupied and Respondent is ordered to immediately cease rentals due to possible life safety hazards.
4. Respondent is ordered to correct the violation by:

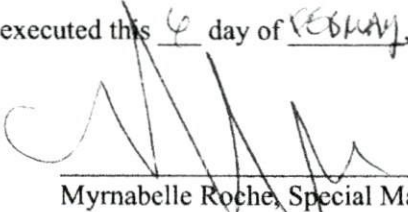
OBTAINING A PERMIT FOR REMODEL

5. If the violation has been corrected, the amount ordered by the Special Magistrate for administrative costs and fees in the amount of \$75.00 is still ordered.
6. In the event that the said violation is not corrected **WITHIN 30 DAYS**, a fine of **\$250.00 per day** shall be imposed against Respondent and the Property, beginning on that date and continuing for each day that the aforesaid violation continues to exist.
7. In the event that the violation is not corrected by the above mentioned date and/or the costs ordered herein have not been paid, a hearing to impose a lien against all

real and personal property of Respondent for the amount ordered will be held before the Special Magistrate on **April 16, 2020**, at 10:30 a.m. at Town Hall, 2525 Estero Blvd., Fort Myers Beach, FL, and could result in a foreclosure action.

8. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 30th day of January, 2020, and executed this 4 day of FEBRUARY, 2020.


Myrnabelle Roche, Special Magistrate

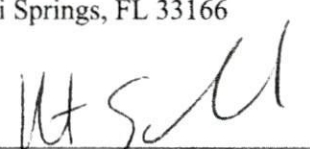
APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

Pursuant to Chapter 162.09 (3), Florida Statutes, A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon and other real or personal property owned by the violator.

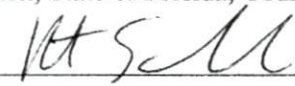
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 11 day of February, 2020 to:

Dania Carballo Ortiz and Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: 

2/11/2020

Page 3 of 3

EXHIBIT D

PARCEL #: 20-046-24-W4-01700.0050

This Document Prepared By and Return To:

Town of Fort Myers Beach Code Enforcement Department

2525 Estero Blvd.

Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0700

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on September 17, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

3. The NOV specified that Respondent was required to correct the violation by a time certain, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and on January 30, 2020, a hearing took place at which competent substantial evidence was entered into the record. Accordingly, the Town of Fort Myers Beach Special Magistrate ("Special Magistrate") entered an Order of Enforcement finding the Respondent in violation of Section 6-111, Adopting FBC 105.1 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, not paid the accrued fine in the amount of \$56,000.00, which began to accrue on March 1, 2020, and continues to accrue in the amount of \$250.00 per day, nor paid the administrative fee/cost of prosecution in the amount of \$75.00.
6. Due to noncompliance with the Order of Enforcement, a Notice of Hearing was served on the Respondent stating a hearing to impose lien would take place on September 17, 2020.

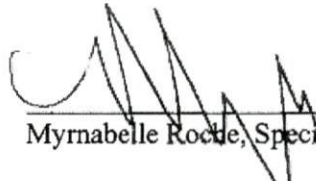
B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$56,075.00, has accrued as of the date of this hearing and continues to accrue in the amount of \$250.00 per day for every day that Respondent is in non-compliance with the Order of Enforcement previously entered in this case.
2. This Order may be recorded in the public records of Lee County, Florida or in any other county in the State of Florida where Respondent owns property and if so recorded shall constitute a lien against the Property and any other real or personal property that Respondent owns in Lee County or other county in the State of Florida.
3. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 17th day of September, 2020, and executed this 30 day of SEP, 2020.


Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

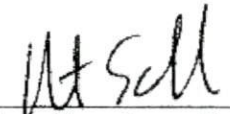
PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 10 day of October, 2020 to:

Dania Carballo Ortiz + Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

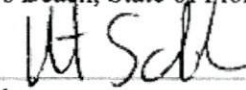
BY: 
Dated _____

EXHIBIT E



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

8/15/2018

ORTIZ DANIA CARBALLO + GARCIA
581 DE LEON DR
MIAMI SPRINGS, FL 33166

CASE NUMBER:	CE18-0724
CERTIFIED MAIL:	7018 0680 0000 1523 2746

SITE ADDRESS: 268/270 NATURE VIEW CT
PARCEL STRAP NO: 204624W4017000050

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **8/13/2018** by Town of Fort Myers Beach Code Enforcement Officer **MOLLY JACOBS** indicates that the following items are a violation:

Work w/out Permit - Roof

These items are a violation of the following Town Codes:

LDC Sec 6-111 The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law.

FBC 105.1 Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

You are hereby directed to abate or remedy these violations within 30 days of receipt of this notice.

***The violation(s) can be abated or corrected by taking the following actions:
Secure required permit and associated inspections.***



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

ONCE YOU HAVE ABATED OR CORRECTED THE VIOLATIONS, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED BY A CODE OFFICER TO VERIFY THAT THE VIOLATION(S) HAVE BEEN ABATED OR CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) abated and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 476-2467 for Molly Jacobs or (239) 218-4830 for Joe Kontomanolis if you have any questions concerning this Notice of Violation.

Respectfully,

MOLLY JACOBS

Code Enforcement Officer
Town of Fort Myers Beach

Received By: _____ Date: _____

EXHIBIT F

PARCEL #: 20-46-24-W4-01700.0050

This Document Prepared By and Return To:

Town of Fort Myers Beach Code Enforcement Department

2525 Estero Blvd.

Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0724

ORTIZ, DANIA CARBALLO + GARCIA, DAISY T/C,

Respondent.

CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on January 30, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz, present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 3

3. The NOV specified that Respondent was required to correct the violation by a specified amount of time, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and therefore, this case is properly before the Special Magistrate.
5. The following condition exists on the Property:

WORK WITHOUT PERMIT- ROOF

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 6-111, Adopting FBC 105.1.
2. Based upon the competent substantial evidence presented at the hearing, the Special Magistrate of the Town of Fort Myers Beach has determined that this Order of Enforcement is hereby warranted.

C. ORDER/IMPOSITION OF FINE:

1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$75.00 in administrative costs and fees.
3. Property shall not be occupied and Respondent is ordered to immediately cease rentals due to possible life safety hazards.
4. Respondent is ordered to correct the violation by:

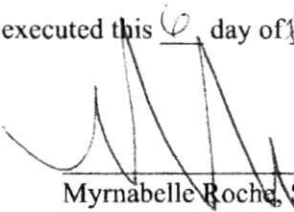
OBTAINING A PERMIT FOR ROOF

5. If the violation has been corrected, the amount ordered by the Special Magistrate for administrative costs and fees in the amount of \$75.00 is still ordered.
6. In the event that the said violation is not corrected **WITHIN 30 DAYS** a fine of **\$250.00 per day** shall be imposed against Respondent and the Property, beginning on that date and continuing for each day that the aforesaid violation continues to exist.
7. In the event that the violation is not corrected by the above mentioned date and/or the costs ordered herein have not been paid, a hearing to impose a lien against all

real and personal property of Respondent for the amount ordered will be held before the Special Magistrate on **April 16, 2020**, at 10:30 a.m. at Town Hall, 2525 Estero Blvd., Fort Myers Beach, FL, and could result in a foreclosure action.

8. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 30th day of January, 2020, and executed this 6 day of January ²⁰²⁰ 2019.


Myrabelle Roche, Special Magistrate

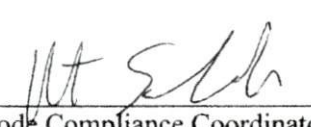
APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

Pursuant to Chapter 162.09 (3), Florida Statutes, A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon and other real or personal property owned by the violator.

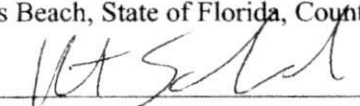
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 11 day of February, 2020 to:

Dania Carballo Ortiz and Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: 
2/11/2020

Page 3 of 3

EXHIBIT G

PARCEL #: 20-046-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0724

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on September 17, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.
2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

3. The NOV specified that Respondent was required to correct the violation by a time certain, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and on January 30, 2020, a hearing took place at which competent substantial evidence was entered into the record. Accordingly, the Town of Fort Myers Beach Special Magistrate ("Special Magistrate") entered an Order of Enforcement finding the Respondent in violation of Section 6-111, Adopting FBC 105.1 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, not paid the accrued fine in the amount of \$56,000.00, which began to accrue on March 1, 2020, and continues to accrue in the amount of \$250.00 per day, nor paid the administrative fee/cost of prosecution in the amount of \$75.00.
6. Due to noncompliance with the Order of Enforcement, a Notice of Hearing was served on the Respondent stating a hearing to impose lien would take place on September 17, 2020.

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$56,075.00, has accrued as of the date of this hearing and continues to accrue in the amount of \$250.00 per day for every day that Respondent is in non-compliance with the Order of Enforcement previously entered in this case.
2. This Order may be recorded in the public records of Lee County, Florida or in any other county in the State of Florida where Respondent owns property and if so recorded shall constitute a lien against the Property and any other real or personal property that Respondent owns in Lee County or other county in the State of Florida.
3. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 17th day of September, 2020 and executed this 30 day of Sept, 2020.



Myrabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

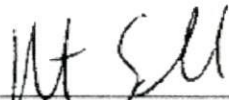
PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 6 day of October, 2020 to:

Dania Carballo Ortiz + Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166



Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

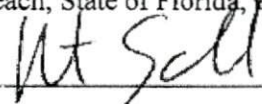
BY:  _____
Dated _____

EXHIBIT H



Town of Fort Myers Beach

NOTICE OF VIOLATION AND NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

August 26, 2020

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

ORTIZ DANIA CARBALLO + GARCIA
581 DE LEON DR
MIAMI SPRINGS, FL 33166,

Respondent.

Site Address: 268/270 NATURE VIEW CT
Parcel Strap No.: 204624W4017000050

Case Number:	CE20-0597
Certified Mail:	7019 1120 0000 0849 8936
Regular Mail:	8/26/2020

NOTICE OF REPEAT VIOLATION AND NOTICE OF CODE ENFORCEMENT HEARING

YOU ARE HEREBY NOTIFIED that, on **2/19/2020**, *Repeat- Rentals for Less Than One (1) Week* was identified as a violation of the Town's Codes.

LDC Sec. 34-2391 Weekly Rental Restrictions in certain zoning districts. Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the "Restricted" sub-group of the "Lodging" use group in Table 34-1).

(2) Dwelling units on property that qualifies for any of these exceptions may be rented to a single-family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Due to this being a repeat violation, you are hereby directed to bring these violations into compliance immediately.

The violation(s) can be brought into compliance by discontinuing renting for less than one week.

This matter will therefore be heard before the Town's Code Enforcement Special Magistrate on:



Town of Fort Myers Beach

NOTICE OF VIOLATION AND NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

9/17/2020 at 11:00 A.M. in the Council Chambers at Town Hall, located at 2525 Estero Boulevard, Fort Myers Beach, Florida.

NO ADDITIONAL NOTICE OF THE HEARING WILL BE PROVIDED TO YOU. If you fail to attend this hearing, the Code Enforcement Special Magistrate will consider the case, even though you are not present, and may assess fines or take other actions that will affect your rights. This is the only Notice of this hearing that you will receive. Please govern yourself accordingly.

Please be aware that under Florida Statutes chapter 162 and Town of Fort Myers Beach Land Development Code Section 2-427(b) a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues or is repeated. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation(s) has been corrected or abated prior to the hearing.

*Kristin
Schumacher*

Code Enforcement Officer
Town of Fort Myers Beach

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202 EXT 1400, WITHIN 2 WORKING DAYS PRIOR TO THE MEETING DATE.

EXHIBIT I

PARCEL #: 20-46-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE20-0597

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

AMENDED CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on September 17, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz and Daisy Garcia, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds, and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV")/Notice of Hearing ("NOH") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 4

3. The NOV/NOH stated that Respondent was required to correct the violation by a specified amount of time, but Respondent failed to do so.
4. The NOV/NOH further stated if compliance was not obtained by the specified amount of time, Respondent was required to appear before the Special Magistrate.
5. The following violation exists on the Property:

REPEAT- RENTALS FOR LESS THAN (1) ONE WEEK

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 34-2391. Weekly Rental Restrictions.
2. Based upon the competent substantial evidence presented at the hearing, the Special Magistrate of the Town of Fort Myers Beach has determined that this Order of Enforcement is hereby warranted.

C. ORDER/IMPOSITION OF FINE:

1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$75.00 in administrative costs and fees.
3. Respondent is fined \$500.00 for each of the 12 repeat violations for a total of \$6,000.00.
4. Respondent is ordered to correct the violation by:

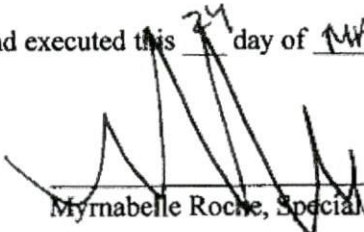
DISCONTINUE RENTALS IMMEDIATELY UNTIL PERMITTING ISSUES ARE RESOLVED. ONCE RESOLVED, ADHERE TO RC ZONING REGULATIONS BY RENTING TO A SINGLE-FAMILY FOR A MINIMUM STAY OF ONE WEEK.

5. In the event that the said violation is not corrected **IMMEDIATELY** a fine of **\$500.00 occurrence** shall be imposed against Respondent and the Property, beginning on that date and continuing for each day that the aforesaid violation continues to exist.
6. In the event that the violation is not corrected by the above-mentioned date and/or the costs ordered herein have not been paid, a hearing to impose a lien against all real and personal property of Respondent for the amount ordered will be held before

the Special Magistrate on **May 20, 2021**, at 11:00 a.m. at Town Hall, 2525 Estero Blvd., Fort Myers Beach, FL, and could result in litigation in Circuit Court.

7. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 17th day of September, 2020, and executed this 24 day of MARCH, 2021.


Myrabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

Pursuant to Chapter 162.09 (3), Florida Statutes, A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon and other real or personal property owned by the violator.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 26 day of March, 2021 to:

Dania Carballo Ortiz & Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY:

Date

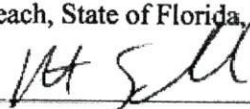

3/26/2021

EXHIBIT J

PARCEL #: 20-46-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE20-0597

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on May 20, 2021, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz and Daisy Garcia, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds, and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 3

3. The NOV specified that Respondent was required to correct the violation by a time certain, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and on September 17, 2020, a hearing took place at which competent substantial evidence was entered into the record. Accordingly, the Town of Fort Myers Beach Special Magistrate ("Special Magistrate") entered an Order of Enforcement finding the Respondent in violation of Section 34-2391 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, has incurred a fine of \$500.00 for each occurrence of the 24 violations, for a total of \$12,000.00, nor paid the administrative fee/cost of prosecution in the amount of \$75.00.
6. Due to noncompliance with the Order of Enforcement, a Notice of Hearing was served on the Respondent stating a hearing to impose lien would take place on March 18, 2021.

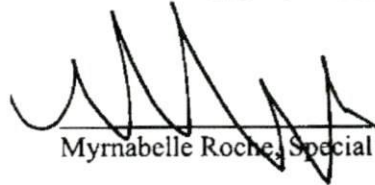
B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$12,075.00, has accrued as of the date of this hearing due to non-compliance with the Order of Enforcement previously entered in this case.
2. This Order may be recorded in the public records of Lee County, Florida or in any other county in the State of Florida where Respondent owns property and if so, recorded shall constitute a lien against the Property and any other real or personal property that Respondent owns in Lee County or other county in the State of Florida.
3. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 20th day of May, 2021, and executed this 26 day of May, 2021.


Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

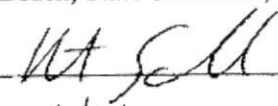
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 1 day of June, 2021 to:

Dania Carballo Ortiz & Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: 
Dated 6/1/2021



Dania Carballo Ortiz + Daisy Garcia
268/270 Nature View Ct
Fort Myers Beach, FL 33931

RE: Request for Code Enforcement Lien Reduction – CE 18-0724

Dear Ms. Ortiz & Ms. Garcia:

This letter is a sufficiency determination and recommendation regarding your request for a lien reduction in accordance with Section 2-432 of the Town of Fort Myers Beach Code of Ordinances. Based on the Town's records, the amount of the lien is \$286,075.00 as of March 1, 2024. The property was in non-compliance from February 29, 2020, to April 18, 2023 (1,144 days) at \$250 per day, plus a \$75.00 administrative fee.

Section 2-432(a)(2) of the Town of Fort Myers Beach Code of Ordinances provides if a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the property, the violator/property owner may apply for a reduction of the lien by providing a written application to the town manager. I am in receipt of your application filed on October 3, 2023, a copy of which is attached as Exhibit A.

The Code requires the application to include specific information, which has been reviewed for sufficiency by Town Staff. Staff comments are underlined below:

a. A copy of the order imposing a lien upon the property: A copy of the lien recorded on October 7, 2020 as Instrument 2020000241617 is included in Exhibit A. The lien is based on an order by the Special Magistrate, who found a violation for no permit for a roof for property located at 268/270 Nature View Court, Fort Myers Beach, Florida, which was not remedied by the compliance date February 29, 2020.

b. The code enforcement case number: CE 18-0724.

c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town Code: Based on information in CE 18-0724, the code violation for no roof permit was remedied and in compliance on April 18, 2023.

d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted: Financial hardship based on illness, loss of manpower and a pending mortgage default.

e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted: The owner requests forgiveness of 100% of the lien.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded: Combination of illness, lack of manpower, and financial constraints.

g. The amount of the reduction in penalty or fine requested by the violator/property owner: The owner requests forgiveness of 100% of the lien.

h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default: The property owner claims there is an existing mortgage with Regions Bank in the amount of \$305,000, executed on August 8, 2013, which is currently in default \$46,000.

i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal: Additional documents in support of the applicant's request are included in Exhibit A; and

j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager or designee: The application was properly submitted.

Section 2-432(3) requires payment of a \$200 administrative fee, which was paid.

Section 2-432(4) requires confirmation of compliance prior to presentation of a request for a lien reduction to the Town Council. As stated above, the violation has been corrected.

Based on my review, this letter is my written approval of the sufficiency of your lien reduction application, which will be forwarded to the Town Council for review on March 18, 2024, in accordance with the following criteria found in Section 2-432 of the Town of Fort Myers Beach Code of Ordinances and my recommendation of denial for the reasons highlighted below:

a. The gravity of the violation(s) The violation for unpermitted roof repairs created a risk to the welfare, life and/or safety of the community when the property was not in compliance.;

b. The amount of time it took the violator/property owner to come into compliance: It took the owner 1,144 days to come into compliance.;

c. The accrued amount of the code enforcement lien as compared to the market value of the property: The accrued fine in the amount of \$286,075.00 is nominal compared to the market value of the property, which is actively being marketed for sale for \$1,599,900.;

d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action; Per the application,



there is a mortgage on the property where \$341,000.00, including the amount in default, is owed.;

e. Any previous code violation(s) of applicant/owner; This particular property owner also has 2 other violations where there have been liens filed against the property. CE18-0700, remodel without permit, is a violation that is still not in compliance and daily fines continue to accrue. CE20-0597, rentals for less than 1 week, is a violation now in compliance with an accrued fine of \$12,075.00. Furthermore, Furthermore, this lien is included in the pending foreclosure case initiated by the Town.

f. Consideration for the future or proposed use of the property for public purpose: N/A; and

g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida: This is the only property Dania Carballo Ortiz and Daisy Garcia own in Lee County.

Sincerely,

Andrew Hyatt, Town Manager

Instrument Prepared by and Return to:
Fort Myers Beach Code Enforcement
2731 Oak Street
Fort Myers Beach, Florida 33931

**TOWN OF FORT MYERS BEACH, FLORIDA
CODE ENFORCEMENT**

AFFIDAVIT OF COMPLIANCE

**STATE OF FLORIDA)
COUNTY OF LEE)**

BEFORE ME, the undersigned authority, personally appeared Kristin Schumacher, a designee for the Town of Fort Myers Beach, FL, and served as a "Code Inspector" as defined by section 162.04, Florida Statutes to assure compliance with the Town of Fort Myers Beach, deposes and says:

1. On the 13th day of August, 2018, Dania Carballo Ortiz and Daisy Garcia (property owners) was found in violation of the Town of Fort Myers Beach Ordinance No. 105.1, (Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.) at the property located at 268/270 Nature View Ct, Fort Myers Beach, FL 33931 ("Subject Property") by virtue of a Code Enforcement Order by the Special

Magistrate in Case No. CE18-0724, which was adjudicated on the 17th day of September, 2020.

2. The Order was recorded as Instrument No. 2020000241617 on the 7th day of October, 2020 in the public records of Lee County, Florida. Dania Carballo Ortiz and Daisy Garcia were given 30 days to come into compliance with the Special Magistrate's Order, which was on or before the 29th day of February, 2020.

3. According to available records in possession of the Town of Fort Myers Beach, an inspection of the Subject Property was performed by a Code Inspector on the 18th day of April, 2023 and the Subject Property was found in compliance.

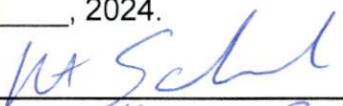
4. No further action has been taken by the Town of Fort Myers Beach regarding this violation, which was corrected as stated above.

5. Code Enforcement Case No. CE18-0724 will be closed once fines/liens are paid in full.

6. I have personal knowledge of all these facts based on my review of records in possession of the Town of Fort Myers Beach, Florida.

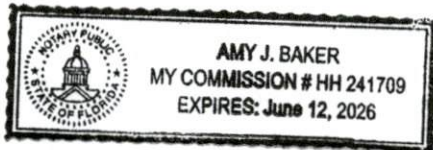
FURTHER AFFIANT SAYETH NOT.

Signed on this ^{13th} ~~24th~~ day of March, 2024.


Print Name: Kristin Schumacher
Code Inspector (Designee)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 13 day of March, 2024 by Kristin Schumacher as Designee, who is personally known to me or has produced _____ as identification.



Amy J Baker
Signature of Notary

Amy J Baker
(Name typed, printed or stamped)

My Commission expires: _____

1. **Request:**

Meeting Date: March 18, 2024

Lien Reduction Request CE20-0597

Why the action is necessary:

Dania Carballo Ortiz submitted a lien reduction request application. The lien was recorded and attached to the property owned by Dania Carballo Ortiz and Daisy Garcia.

What the action accomplishes:

Grant or deny lien reduction

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Lien reduction request

4. **Submitter of Information:**

Frankie Kropacek, Operations & Compliance Director

5. **Background:**

Based on the Town's records, the amount of the lien is \$12,075.00 as of March 1, 2024. There is no daily fine.

Section 2-432(a)(2) of the Town of Fort Myers Beach Code of Ordinances provides that if a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the property, the violator/property owner may apply for a reduction of the lien by providing a written application to the town manager. The application for a lien reduction was received on October 17, 2023, a copy of which is attached as Exhibit A.

The Code requires the application to include specific information, which has been reviewed for sufficiency by Town Staff. Staff comments are underlined below:

a. A copy of the order imposing a lien upon the property: A copy of the lien recorded on March 30, 2021, as Instrument 2021000098239 is included in Exhibit A. The lien is based on an order by the Special Magistrate, who found 24 violations regarding short term rental occurring at property located at 268/270 Nature View Court, Fort Myers Beach, Florida.

b. The code enforcement case number: CE 20-0597.

c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the Town Code: Based on information in CE 20-0597, 24 separate violations occurred and compliance was achieved on May 20, 2021.

d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted: Financial hardship based on illness, no manpower, financial constraints and a pending mortgage default.

e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted: The owner requests forgiveness of 96% of the lien.

f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded: Illness, no manpower, financial constraints.

g. The amount of the reduction in penalty or fine requested by the violator/property owner: The owner requests forgiveness of 96% of the lien.

h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default: The property owner claims there is an existing mortgage with Regions Bank in the amount of \$305,000, executed on August 8, 2013, which is currently in default for \$46,000.

i. All documents or other evidence that support the applicant's request for a reduction or

forgiveness of the lien, which must be included with the application at the time of submittal: Additional documents in support of the applicant's request are included in Exhibit A; and

j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager or designee: The application was properly submitted.

Section 2-432(3) requires payment of a \$200 administrative fee, which was paid.

Section 2-432(4) requires confirmation of compliance prior to presentation of a request for a lien reduction to the Town Council. As stated above, the violation has been corrected.

Attachments:

1. Exhibit A Sec 2-432- Procedure to obtain reduction and-or release of a code enforcement lien
2. Exhibit A CE20-0597 268-270 Nature View Ct Lien Reduction Request
3. Exhibit A CE20-0597 Letter of Sufficiency and Affidavit of Compliance

Financial Impact:

6. Alternative Action

Approve reduction request.

7. Management Recommendations:

In accordance with the following criteria found in Section 2-432 of the Fort Myers Beach Code of Ordinances, management recommends denial of the lien reduction for the reasons highlighted below:

a. The gravity of the violation(s):The short-term rental violation posed a nuisance to the neighbors by allowing guests to stay for less than the minimum time allowed.;

b. The amount of time it took the violator/property owner to come into compliance: Since 2019 there have been 2 other cases with violations found. This was an ongoing violation for the property

c. The accrued amount of the code enforcement lien as compared to the market value of the property: The fine in the amount of \$12,075.00 is nominal compared to the market value of the property, which is actively being marketed for sale for \$1,599,900.

d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action; Per the application, there is a mortgage on the property where \$341,000.00, including the amount in default, is owed.

e. Any previous code violation(s) of applicant/owner; This particular property owner also has 2 other liens pending foreclosure: CE-0700, remodel without permit (upper level), is a violation that is still not in compliance and daily fines continue to accrue. CE18-0724, is for unpermitted roofing, but is now in compliance with an accrued fine.

f. Consideration for the future or proposed use of the property for public purpose N/A; and

g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida: This is the only property Dania Carballo and Daisy Garcia own in Lee County.

8. Recommended Approval:

Kristin Schumacher, Flood Plain Supervisor
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 3/13/2024
Approved - 3/13/2024
Approved - 3/13/2024
Approved - 3/13/2024

Sec. 2-432. - Procedure to obtain reduction and/or release of a code enforcement lien.

- (a) Where a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the land and/or property of the violator/property owner, such violator/property owner may apply for a release of such lien as follows:
 - (1) Upon full payment by the violator/property owner of the fine or penalty imposed as a result of a code enforcement action, the town manager or designee is hereby authorized to execute and record, at the property owner's expense, a release of lien.
 - (2) Upon request for a reduction or forgiveness of a fine or penalty that constitutes a lien resulting from a code enforcement action, the violator/property owner shall submit a written application to the town manager or designee. The application shall include the following:
 - a. A copy of the order imposing a lien upon the property;
 - b. The code enforcement case number;
 - c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town Code;
 - d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted;
 - e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;
 - f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded;
 - g. The amount of the reduction in penalty or fine requested by the violator/property owner;
 - h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default;
 - i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal; and
 - j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager designee.
 - (3) The violator/property owner shall submit, at the time of application, an application fee in the amount of \$200.00 to reimburse the town for its administrative costs associated with handling the application and recording the order imposing a penalty or fine and the requested release of lien. The application cost is non-refundable, without regard to the final disposition of the application for reduction, forgiveness and release of lien.

- (4) Upon receipt of the application for release of lien and the payment provided above, the town manager, or designee, shall confirm through the code enforcement division that the violation which resulted in the order imposing the penalty or fine has been brought into full compliance.
- (5) The town manager, or designee, shall then review and consider the status of the application for release of lien with respect to the following:
 - a. If a property owner acquired the property after the code enforcement lien was recorded, a waiver or reduction of lien may not be granted because the lien should have been identified and satisfied by the property owner at the time of purchase of the property.
 - b. If a title insurance policy was issued at the time the property was purchased and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien may not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction or waiver would place the town in the position of indemnifying the title insurer against its losses, which losses are the result of negligent examination of title by the title insurer.
 - c. A request for waiver or reduction in lien may not be granted if the town council has previously reduced the amount of the lien. This statement applies whether or not the request is received from the original applicant for reduction or from a subsequent applicant who acquired the property.
- (6) If the town manager or designee determines that the request falls within any one of the above factual situations, the town manager or designee shall issue a written denial of the request for reduction or forgiveness. If the applicant desires to appeal the town manager's decision to the town council, the applicant may do so by filing a written appeal with the town manager stating the reason(s) why the town council should make an exception to its established guidelines and consider a reduction or forgiveness of the lien. Upon filing of a proper appeal, the town manager shall present the information to the town council at a regular meeting for their consideration and final determination.
- (7) If the town manager or designee determines that the request does not fall within any of the above factual situations and therefore qualifies for possible reduction or forgiveness, the town manager or designee shall review the request further. The town manager or designee, in formulating a recommendation on whether to reduce the amount of the lien or forgive the lien entirely, shall consider the following factors:
 - a. The gravity of the violation(s);
 - b. The amount of time it took the violator/property owner to come into compliance;
 - c. The accrued amount of the code enforcement lien as compared to the market value of the property;

- d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action;
 - e. Any previous code violation(s) of applicant/owner;
 - f. Consideration for the future or proposed use of the property for public purpose; and
 - g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida.
- (8) The town manager or designee shall place the application for satisfaction or release of lien upon the agenda of a regularly scheduled town council meeting. The town council may take action based solely upon the sworn application, recommendation of the town manager or designee and the applicant shall have opportunity to address the town council as to the factors he or she believes warrant reduction or waiver of lien in considering the application for satisfaction or release of lien.
- (9) The town council may reduce the amount of the lien, waive the full amount of the lien or continue the lien in its full amount and may accept, modify or reject the recommendations of the town manager or designee.
- (10) Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the town council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall be come null and void and the full amount of the lien shall be due and payable.
- (11) When a lien is satisfied as a result of full payment, reduced payment or waiver as ordered by the town council, the town shall record the satisfaction/release of lien in the public records of Lee County, Florida and provide a copy to the property owner.

(Ord. No. 12-05, § 3, 6-18-2012)



Exhibit A

Town of Fort Myers Beach

CODE ENFORCEMENT LIEN REDUCTION REQUEST APPLICATION (ord. 12-05)

A copy of the order imposing the lien must be submitted with this application. A non-refundable \$200.00 application fee will be due at the time the application is submitted.

Code Enforcement Case Number: CE20-0597

Date: October 8, 2023

Date Subject Property was brought into Compliance with Town Code: as per FMB Attorney in progress

Reasoning for reduction (factual):

Due to significant financial hardship following devastation of Ian. Financial hardship has been compounded with limitation of insurance pay out which has left me with considerable strain on my already limited financial resources. The permits are attached for the remodel and roof. I am in urgent need to close on the property sale on November 9, 2023 to pay Regions mrtg. and this fine as well as all the debt I have incurred since the hurricane to survive and to fix the property up to code.

Reasoning compliance not accomplished by time lien was recorded:

combination of illness, lack of manpower and financial constraints compounded the challenges faced in achieving compliance. I relied on help from friends and family who left me in worse situation, these factors lead to delays and a complete halt in compliance activities resulting in noncompliance being recorded before necessary action could be completed.

Amount of reduction requested: 96% reduction and balance to be paid immediately to City

Outstanding Mortgage Information. Please include date(s) recorded and whether currently in default. Regions Mortgage amount due \$305,000.00 plus ten months default as of today \$46,000.00 and legal fees

Recorded Mrtg. 08-08-2013 - currently in default

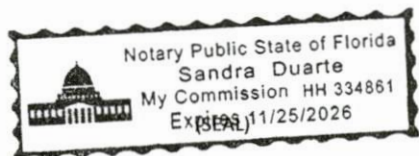
All documents or other evidence that supports reduction request must be included in the application

Applicant Signature: [Signature] Date: October 8, 2023

Applicant Printed Name: Dania Carballo Ortiz

STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this 12 day of Oct. 2023, by Dania Fraida Carballo



[Signature]
Notary Public Signature

Sandra Duarte
Notary Printed Name

Personally Known _____ or Produced Identification ✓

Type of Identification Produced: FDL 806-U

My Commission Expires: 11/25/26

IN THE CIRCUIT COURT OF THE 20TH
CIRCUIT, IN AND FOR LEE COUNTY,
FLORIDA

CASE NO. _____

TOWN OF FORT MYERS BEACH,
FLORIDA

Plaintiff,

vs.

DANIA CARBALLO ORTIZ and
DAISY GARCIA

Defendants.
_____ /

COMPLAINT TO FORECLOSE MUNICIPAL LIENS

Plaintiff, Town of Fort Myers Beach, a Florida municipal corporation (the "Town"), by and through its undersigned counsel, sues Defendants, Dania Carballo Ortiz, and Daisy Garcia, and alleges:

SUBJECT MATTER, PARTIES, AND VENUE

1. This is an action to foreclose three (3) municipal code enforcement liens on real property located in Lee County, Florida.

2. The Town is authorized by the State of Florida to create a code enforcement board or code enforcement special magistrate position, establish a code enforcement system, and hold hearings and assess fines against violators to promote, protect, and improve the health, safety, and welfare of the business owners, residents, and visitors of the Town. *See* Chapter 162, Florida Statutes.

3. The Town is a Florida municipal corporation located in Lee County, Florida, and organized under the laws of the State of Florida.

4. Defendants reside in Miami-Dade County, Florida, and are otherwise *sui juris*.
5. Venue is proper because the real property at issue is located in Lee County, Florida, and the causes of action set forth herein arose or accrued in Lee County.
6. This Court has subject matter jurisdiction over this action pursuant to Fla. Stat. § 26.012 and Fla. Stat. § 162.30.
7. This Court has personal jurisdiction over Defendants under Fla. Stat. § 48.193(2) because Defendants are Florida residents owning real property in the state.
8. Defendants own and possess certain real property in Lee County, Florida, located at 268/270 Nature View Court, Fort Myers Beach, Florida 33931 (the "Property"). The Property is legally described as follows:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, and the Public Records of Lee County, Florida.
9. Defendants obtained ownership of the Property on August 8, 2013, through a Warranty Deed recorded on August 12, 2013 at Official Records Instrument No. 2013000185758 of the Public Records of Lee County, Florida. A copy of the Deed is attached hereto as **Exhibit "A"** and incorporated herein by reference.
10. The Property is not a homestead under the laws of the State of Florida.
11. All conditions precedent to the bringing of this action has been performed, have been waived, have been executed, or have occurred.
12. The Town is obligated to pay its attorneys a reasonable fee for their services and Defendants are responsible for the liens and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances ("Town Code"), Article V, Sec. 2-427(d).

COUNT I
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE18-0700)

13. The Town repeats and realleges Paragraphs 1 through 12 of the Complaint as if fully set forth herein.

14. This is an action to foreclose on a municipal code enforcement lien entered against the Property under Case No. CE18-0700.

15. On or about August 15, 2018, the Town issued a Notice of Violation to Defendants for remodeling the Property, without permits, after it suffered significant fire damage, in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1, which states: "Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit." A copy of the Notice of Violation is attached hereto as **Exhibit "B"** and incorporated herein by reference.

16. The Notice of Violation specified that Defendants were required to correct the violations by a certain date, but Defendants failed or refused to do so.

17. As a result of Defendants' failure or refusal to correct the violations, the Town scheduled a code compliance hearing for January 30, 2020, and served Defendants with a notice of hearing for same.

18. On January 30, 2020, a Special Magistrate for the Town held a duly noticed public hearing related to the violations. Defendants appeared at the hearing and had the

opportunity to present testimony, evidence, and arguments in their defense.

19. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the Property was remodeled without permits in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1 of same.

20. The Special Magistrate ordered that the "Property shall not be occupied and [Defendants are] ordered to immediately cease rentals due to possible life safety hazards," that Defendants must correct the violation by "obtaining a permit for remodel," and, if the violations were not corrected within 30 days, a fine of \$250.00 per day would be imposed and continue to accrue against Defendants and the Property until the Property was brought into compliance.

21. The Code Enforcement Order was entered on January 30, 2020, executed on February 6, 2020, and a copy was recorded on February 18, 2020, at Official Records Instrument No. 2020000042776 in the public records of Lee County, Florida. A copy of the Code Enforcement Order is attached hereto as **Exhibit "C"** and incorporated herein by reference.

22. Despite the Special Magistrate's orders, Defendants continued to fail or refuse to obtain a permit for the remodel or otherwise bring the Property into compliance.

23. Due to Defendants' continued failure or refusal to bring the Property into compliance or otherwise comply with the Code Enforcement Order, the Town scheduled a hearing for September 17, 2020, to impose a fine and lien against the Property and served Defendants with a notice of hearing for same.

24. On September 17, 2020, a Special Magistrate for the Town held a duly noticed public hearing to consider entering an order imposing a fine and lien against the Property.

Defendants again had the opportunity to appear before the Special Magistrate to present testimony, evidence, and arguments in their defense, but failed to appear.

25. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order Imposing Lien, finding that Defendants failed to comply with the Code Enforcement Order, failed to pay the accrued fine of \$56,000.00, and failed to pay the administrative fee of \$75.00. The Special Magistrate certified that a fine of \$56,075.00 had accrued through September 17, 2020, and that the fine would continue to accrue in the amount of \$250.00 per day until the Property was brought into compliance.

26. The Code Enforcement Order Imposing Lien was entered on September 17, 2020, executed on September 30, 2020, and recorded on October 7, 2020, at Official Records Instrument No. 2020000241616 in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing Lien is attached hereto as **Exhibit "D"** and incorporated herein by reference.

27. Defendants were afforded 30 days to appeal the Code Enforcement Order and the Code Enforcement Order Imposing Lien, from the respective dates of execution, but failed to do so. Accordingly, the Code Enforcement Order and Code Enforcement Order Imposing Lien are final, non-appealable orders.

28. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as "Lien 1," constitutes a valid and enforceable lien against the Property and any other real or personal property owned by Defendants.

29. Through August 12, 2022, the Lien 1 secures a total of \$229,575.00 in accrued fines, which continue to accrue at \$250.00 per day.

COUNT II
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE18-0724)

33. The Town repeats and realleges Paragraphs 1 through 12 of the Complaint.

34. This is an action to foreclose on a municipal code enforcement lien entered against the Property under Case No. CE18-0724.

35. On or about August 15, 2018, the Town issued a Notice of Violation to Defendants for repairing or replacing the roof for a building at the Property, without permits, after the Property suffered significant fire damage, in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1, which states: "Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit." A copy of the Notice of Violation is attached hereto as **Exhibit "E"** and incorporated herein by reference.

36. The Notice of Violation specified that Defendants were required to correct the violations by a certain date, but Defendants failed or refused to do so.

37. As a result of Defendants' failure or refusal to correct the violations, the Town scheduled a code compliance hearing for January 30, 2020, and served Defendants with a notice of hearing for same.

38. On January 30, 2020, a Special Magistrate for the Town held a duly noticed public hearing related to the violations. Defendants appeared at the hearing and had the

opportunity to present testimony, evidence, and arguments in their defense.

39. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the roof was repaired or replaced without permits and the Property was in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1.

40. The Special Magistrate further ordered that the "Property shall not be occupied and [Defendants are] ordered to immediately cease rentals due to possible life safety hazards," that Defendants must correct the violation by "obtaining a permit for roof," and, if the violations were not corrected within 30 days, a fine of \$250.00 per day would be imposed and continue to accrue against Defendants and the Property until the Property was brought into compliance.

41. The Code Enforcement Order was entered on January 30, 2020, executed on February 6, 2020, and a copy was recorded on February 18, 2020, at Official Records Instrument No. 2020000042777 in the public records of Lee County, Florida. A copy of the Code Enforcement Order is attached hereto as **Exhibit "F"** and incorporated herein by reference.

42. Despite the Special Magistrate's orders, Defendants continued to fail or refuse to obtain a permit for the roof or otherwise bring the Property into compliance.

43. Due to Defendants' continued failure or refusal to bring the Property into compliance or otherwise comply with the Code Enforcement Order, the Town scheduled a hearing for September 17, 2020, to impose a fine and lien against the Property and served Defendants with a notice of hearing for same.

44. On September 17, 2020, a Special Magistrate for the Town held a duly noticed public hearing to consider entering an order imposing a fine and lien against the Property.

Defendants again had the opportunity to appear before the Special Magistrate to present testimony, evidence, and arguments in their defense, but failed to appear.

45. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order Imposing Lien, finding that Defendants failed to comply with the Code Enforcement Order, failed to pay the accrued fine of \$56,000.00, and failed to pay the administrative fee of \$75.00. The Special Magistrate certified that a fine of \$56,075.00 had accrued through September 17, 2020, and that the fine would continue to accrue in the amount of \$250.00 per day until the Property was brought into compliance.

46. The Code Enforcement Order Imposing Lien was entered on September 17, 2020, executed on September 30, 2020, and recorded on October 7, 2020, at Official Records Instrument No. 2020000241617, in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing is attached hereto as **Exhibit “G”** and incorporated herein by reference.

47. Defendants were afforded 30 days to appeal the Code Enforcement Order and the Code Enforcement Order Imposing Lien, from the respective dates of execution, but failed to do so. Accordingly, the Code Enforcement Order and Code Enforcement Order Imposing Lien are final, non-appealable orders.

48. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as “Lien 2,” constitutes a valid and enforceable lien against the Property and any other real or personal property owned by Defendants.

49. Through August 12, 2022, the Lien 2 secures a total of \$229,575.00 in accrued fines, which continue to accrue at \$250.00 per day.

30. As of the date of this Complaint, the Property has not been brought into compliance.

31. The amount due for Lien 1 remains wholly unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining necessary parties to this action.

32. At the meeting of the Town Council on April 18, 2022, the Town Council authorized the undersigned counsel to enforce and foreclose on Lien 1.

WHEREFORE, the Town respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the Property for the full amount due pursuant to Lien 1, including the principal, all accrued interest, attorney's fees and costs, and other expenses, and if such sums are not paid within the time set by the Court, that the Property be sold to satisfy the amounts owed to the Town;

(b) Order that Defendants, and all persons, partnerships, corporations, or entities claiming by, through or under the Defendants since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the Property;

(c) That the proceeds of any sale resulting here from, if any, be applied to reduce the indebtedness due under Lien 1;

(d) Order that Defendants are responsible for Lien 1 and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Such other and further relief as the Court deems just and proper.

50. As of the date of this Complaint, the Property has not been brought into compliance.

51. The amount due for Lien 2 remains wholly unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining necessary parties to this action.

52. At the meeting of the Town Council on April 18, 2022, the Town Council authorized the undersigned counsel to enforce and foreclose on Lien 2.

WHEREFORE, the Town respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the Property for the full amount due pursuant to Lien 2, including the principal, all accrued interest, attorney's fees and costs, and other expenses, and if such sums are not paid within the time set by the Court, that the Property be sold to satisfy the amounts owed to the Town;

(b) Order that Defendants, and all persons, partnerships, corporations, or entities claiming by, through or under the Defendants since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the Property;

(c) That the proceeds of any sale resulting here from, if any, be applied to reduce the indebtedness due under the Lien 2;

(d) Order that Defendants are responsible for Lien 2 and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Such other and further relief as the Court deems just and proper.

COUNT III
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE20-0597)

53. Plaintiff repeats and realleges Paragraphs 1 through 12 of the Complaint.

54. This is an action to foreclose on a municipal code enforcement lien entered against the Property under Case No. CE18-0700.

55. On or about August 26, 2020, the Town issued a Notice of Violation to Defendants for related to short-term rentals at the Property in violation of Section 34-2391 of Town's Land Development Code, which "restricts the rental of any permitted dwelling unit in certain zoning districts to a single-family during any one-month period, with a minimum stay of one week" A copy of the Notice of Violation is attached hereto as **Exhibit "H"** and incorporated herein by reference.

56. The Notice of Violation specified that Defendants were required to correct the violations by a certain date, but Defendants failed or refused to do so.

57. As a result of Defendants' failure or refusal to correct the violations, the Town scheduled a code compliance hearing for September 17, 2020, and served Defendants with a notice of hearing for same.

58. On September 17, 2020, a Special Magistrate for the Town held a duly noticed public hearing related to the violations. Although they had the opportunity to attend the hearing and present testimony, evidence, and arguments in their defense, Defendants failed to appear.

59. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the Defendants were renting the property for durations of less than one-week and were repeat violators of Section 34-2391 of the Town's Land Development Code.

60. The Special Magistrate further ordered that Defendants “discontinue rentals immediately until permitting issues are resolved, once resolved, adhere to RC Zoning Regulations by renting to a single-family for a minimum stay of one week,” assessed a fine in the amount \$6,000, assessed administrative costs and fees in the amount of \$75.00, and ordered that fines of \$500.00 per occurrence would be assessed for continued violations.

61. The Code Enforcement Order was originally entered on September 17, 2020, executed on September 30, 2020, and recorded on October 7, 2020, at Official Records Instrument No. 2020000241612 in the public records of Lee County, Florida. The Order was later amended by that certain Amended Code Enforcement Order, entered on September 17, 2020, executed on March 24, 2021, and recorded on March 30, 2021, at Official Records Instrument No. 2021000098239 in the public records of Lee County, Florida. A copy of the Amended Code Enforcement Order is attached hereto as **Exhibit “I”** and incorporated herein by reference.

62. Despite the Special Magistrate’s orders, Defendants continued to fail or refuse to cease short-term rentals for durations of less than one-week and continued to rent the Property prior to resolving permitting issues (as discussed in Counts I and II) in violation of the Amended Code Enforcement Order.

63. Due to Defendants’ continued failure or refusal to bring the Property into compliance or otherwise comply with the Amended Code Enforcement Order, the Town scheduled a hearing for May 20, 2021, to impose a fine and lien against the Property and served Defendants with a notice of hearing for same.

64. On May 20, 2021, a Special Magistrate for the Town held a duly noticed public hearing to consider entering an order imposing a fine and lien against the Property. Defendants again had the opportunity to appear before the Special Magistrate to present testimony, evidence,

and arguments in their defense, but failed to appear.

65. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order Imposing Lien, finding that Defendants failed to comply with the Code Enforcement Order, failed to pay the applicable fines, and continued to violate Section 34-2391 of the Town's Land Development Code. The Special Magistrate certified that a fine of \$12,075.00 had accrued through May 20, 2021.

66. The Code Enforcement Order Imposing Lien was entered on May 20, 2021, executed on May 26, 2021, and recorded on June 2, 2021, at Official Records Instrument No. 2021000182144 in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing Lien is attached hereto as **Exhibit "J"** and incorporated herein by reference.

67. Defendants were afforded 30 days to appeal the Code Enforcement Order, the Amended Code Enforcement Order, and the Code Enforcement Order Imposing Lien, from the respective dates of execution, but failed to do so. Accordingly, the Code Enforcement Order, Amended Code Enforcement Order, and Code Enforcement Order Imposing Lien are final, non-appealable orders.

68. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as "Lien 3," constitutes a valid and enforceable lien against the Property and any other real or personal property owned by Defendants.

69. Lien 3 secures a total of \$12,075.00 in accrued fines.

70. As of the date of this Complaint, the Property has not been brought into compliance.

71. The amount due for Lien 3 remains wholly unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining

necessary parties to this action.

72. At the meeting of the Town Council on April 18, 2022, the Town Council authorized the undersigned to enforce and foreclose on Lien 3.

WHEREFORE, the Town respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the Property for the full amount due pursuant to Lien 3, including the principal, all accrued interest, attorney's fees and costs, and other expenses, and if such sums are not paid within the time set by the Court, that the Property be sold to satisfy the amounts owed to the Town;

(b) Order that Defendants, and all persons, partnerships, corporations or entities claiming by, through, or under the Defendants since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the Property;

(c) That the proceeds of any sale resulting herefrom, if any, be applied to reduce the indebtedness due under the Lien 3;

(d) Order that Defendants are responsible for Lien 3 and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOX ROTHSCHILD LLP
Attorneys for Plaintiff

One Biscayne Tower, Suite 2750
2 South Biscayne Boulevard
Miami, Florida 33131
Telephone: 305 442-6547

By: /s/ John R. Herin

JOHN R. HERIN, JR.
Florida Bar No.: 907928
jherin@foxrothschild.com
Sec.Email:jpoli@foxrothschild.com
VICTOR SANABRIA, Esq.
Florida Bar No.: 125292
Vsanabria@foxrothschild.com
BROOKE STEWART, Esq.
Florida Bar No.: 1032231
BStewart@Foxrothschild.com

EXHIBIT A

Prepared by and Return Recorded Original to:

Charles R. Meador, Jr., Attorney at Law
2085 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 463-6619
Facsimile: (239) 463-6454

Property Appraiser Parcel I.D. No. 20-46-24-W4-01700.0050
Grantee Taxpayer I.D. No. _____
Documentary Stamp Tax on Transfer: \$2520

Reserved For Recorder

(STATUTORY FORM - Section 589.02, F.S.)

WARRANTY DEED

THIS WARRANTY DEED, made this 8 day of August, A.D.
2013, between ALVA T. ARGO and DEBORAH A. ARGO, Husband and wife, whose post
office address is 270 Nature View Court, Fort Myers Beach, FL 33931, hereinafter called
Grantor, and DANIA CARBALLO ORTIZ and DAISY GARCIA, whose post office address is
129 Palmetto Drive, Miami Springs, FL 33166, hereinafter called Grantee.

WITNESSETH, That said Grantor, for and in consideration of the sum of Ten and
No/100's Dollars (\$10.00), and other good and valuable consideration, to said Grantor in hand
paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and
sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land,
situate, lying and being in Lee County, Florida, to-wit:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in
Plat Book 30, at Pages 102 and 103, of the Public Records of Lee County, Florida.

SUBJECT TO easements, restrictions and reservations of record and taxes for the current
and subsequent years.

and said Grantor does hereby fully warrant the title to said land, and will defend the same against
lawful claims of all persons whomsoever.

*"Grantor" and "Grantee" are used for singular and plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and
year first above written.

Reserved For Recorder

Signed in the presence of:

Charles R. Meador
#1 Witness Name - print or type

Deborah Miller
#2 Witness Name - print or type

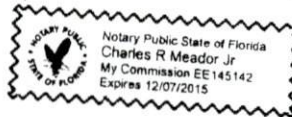
Alva T. Argo (SEAL)
ALVA T. ARGO

Deborah A. Argo (SEAL)
DEBORAH A. ARGO

STATE OF Florida
COUNTY OF Lee

EXECUTION OF the foregoing instrument was acknowledged before me this 8
day of August, 2013, by ALVA T. ARGO and DEBORAH A. ARGO,
Husband and wife, who is (CHECK ONE OF THE FOLLOWING AS APPLICABLE) []
personally known to me, or ☒ who has produced (Florida Driver License) as
identification.

Charles R. Meador Jr.
NOTARY PUBLIC - SIGNATURE ABOVE
NOTARY NAME - Charles R. Meador Jr.
COMMISSION NO. - _____
COMMISSION EXP. DATE - _____
(Notary Name/Commission No./Exp. Date - typed or printed)



(Notary Seal)

EXHIBIT B



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

8/15/2018

ORTIZ DANIA CARBALLO + GARCIA
581 DE LEON DR
MIAMI SPRINGS, FL 33166

CASE NUMBER:	CE18-0700
CERTIFIED MAIL:	7018 0680 0000 1523 2722

SITE ADDRESS: **268/270 NATURE VIEW CT**
PARCEL STRAP NO: **204624W4017000050**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **8/13/2018** by Town of Fort Myers Beach Code Enforcement Officer **MOLLY JACOBS** indicates that the following items are a violation:

Work w/out Permit - Remodel

These items are a violation of the following Town Codes:

LDC Sec 6-111 The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law.

FBC 105.1 Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

You are hereby directed to abate or remedy these violations within 30 days of receipt of this notice.

***The violation(s) can be abated or corrected by taking the following actions:
Secure required permit and associated inspections.***



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

ONCE YOU HAVE ABATED OR CORRECTED THE VIOLATIONS, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED BY A CODE OFFICER TO VERIFY THAT THE VIOLATION(S) HAVE BEEN ABATED OR CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) abated and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 476-2467 for Molly Jacobs or (239) 218-4830 for Joe Kontomanolis if you have any questions concerning this Notice of Violation.

Respectfully,

MOLLY JACOBS

Code Enforcement Officer
Town of Fort Myers Beach

Received By: _____ Date: _____

EXHIBIT C

PARCEL #: 20-46-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0700

ORTIZ, DANIA CARBALLO + GARCIA, DAISY T/C,

Respondent.

CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on January 30, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz, present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 3

3. The NOV specified that Respondent was required to correct the violation by a specified amount of time, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and therefore, this case is properly before the Special Magistrate.
5. The following condition exists on the Property:

WORK WITHOUT PERMIT-REMODEL

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 6-111, Adopting FBC 105.1.
2. Based upon the competent substantial evidence presented at the hearing, the Special Magistrate of the Town of Fort Myers Beach has determined that this Order of Enforcement is hereby warranted.

C. ORDER/IMPOSITION OF FINE:

1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$75.00 in administrative costs and fees.
3. Property shall not be occupied and Respondent is ordered to immediately cease rentals due to possible life safety hazards.
4. Respondent is ordered to correct the violation by:

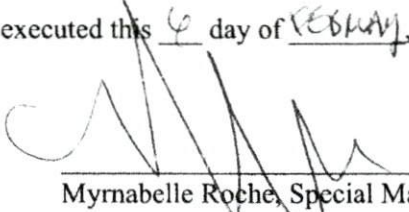
OBTAINING A PERMIT FOR REMODEL

5. If the violation has been corrected, the amount ordered by the Special Magistrate for administrative costs and fees in the amount of \$75.00 is still ordered.
6. In the event that the said violation is not corrected **WITHIN 30 DAYS**, a fine of **\$250.00 per day** shall be imposed against Respondent and the Property, beginning on that date and continuing for each day that the aforesaid violation continues to exist.
7. In the event that the violation is not corrected by the above mentioned date and/or the costs ordered herein have not been paid, a hearing to impose a lien against all

real and personal property of Respondent for the amount ordered will be held before the Special Magistrate on **April 16, 2020**, at 10:30 a.m. at Town Hall, 2525 Estero Blvd., Fort Myers Beach, FL, and could result in a foreclosure action.

8. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 30th day of January, 2020, and executed this 4 day of FEBRUARY, 2020.


Myrnabelle Roche, Special Magistrate

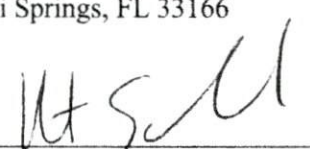
APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

Pursuant to Chapter 162.09 (3), Florida Statutes, A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon and other real or personal property owned by the violator.

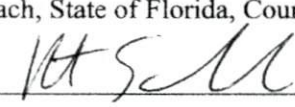
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 11 day of February, 2020 to:

Dania Carballo Ortiz and Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: 

2/11/2020

Page 3 of 3

EXHIBIT D

PARCEL #: 20-046-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0700

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on September 17, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.
2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

3. The NOV specified that Respondent was required to correct the violation by a time certain, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and on January 30, 2020, a hearing took place at which competent substantial evidence was entered into the record. Accordingly, the Town of Fort Myers Beach Special Magistrate ("Special Magistrate") entered an Order of Enforcement finding the Respondent in violation of Section 6-111, Adopting FBC 105.1 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, not paid the accrued fine in the amount of \$56,000.00, which began to accrue on March 1, 2020, and continues to accrue in the amount of \$250.00 per day, nor paid the administrative fee/cost of prosecution in the amount of \$75.00.
6. Due to noncompliance with the Order of Enforcement, a Notice of Hearing was served on the Respondent stating a hearing to impose lien would take place on September 17, 2020.

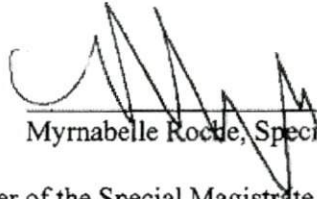
B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$56,075.00, has accrued as of the date of this hearing and continues to accrue in the amount of \$250.00 per day for every day that Respondent is in non-compliance with the Order of Enforcement previously entered in this case.
2. This Order may be recorded in the public records of Lee County, Florida or in any other county in the State of Florida where Respondent owns property and if so recorded shall constitute a lien against the Property and any other real or personal property that Respondent owns in Lee County or other county in the State of Florida.
3. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 17th day of September, 2020, and executed this 30 day of SEP, 2020.


Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

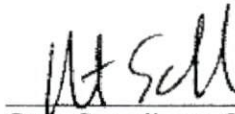
PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 10 day of October, 2020 to:

Dania Carballo Ortiz + Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

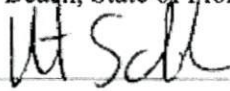
BY: 
Dated _____

EXHIBIT E



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

8/15/2018

ORTIZ DANIA CARBALLO + GARCIA
581 DE LEON DR
MIAMI SPRINGS, FL 33166

CASE NUMBER:	CE18-0724
CERTIFIED MAIL:	7018 0680 0000 1523 2746

SITE ADDRESS: 268/270 NATURE VIEW CT
PARCEL STRAP NO: 204624W4017000050

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **8/13/2018** by Town of Fort Myers Beach Code Enforcement Officer **MOLLY JACOBS** indicates that the following items are a violation:

Work w/out Permit - Roof

These items are a violation of the following Town Codes:

LDC Sec 6-111 The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law.

FBC 105.1 Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

You are hereby directed to abate or remedy these violations within 30 days of receipt of this notice.

***The violation(s) can be abated or corrected by taking the following actions:
Secure required permit and associated inspections.***



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

ONCE YOU HAVE ABATED OR CORRECTED THE VIOLATIONS, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED BY A CODE OFFICER TO VERIFY THAT THE VIOLATION(S) HAVE BEEN ABATED OR CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) abated and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 476-2467 for Molly Jacobs or (239) 218-4830 for Joe Kontomanolis if you have any questions concerning this Notice of Violation.

Respectfully,

MOLLY JACOBS

Code Enforcement Officer
Town of Fort Myers Beach

Received By: _____ Date: _____

EXHIBIT F

PARCEL #: 20-46-24-W4-01700.0050

This Document Prepared By and Return To:

Town of Fort Myers Beach Code Enforcement Department

2525 Estero Blvd.

Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0724

ORTIZ, DANIA CARBALLO + GARCIA, DAISY T/C,

Respondent.

CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on January 30, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz, present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 3

3. The NOV specified that Respondent was required to correct the violation by a specified amount of time, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and therefore, this case is properly before the Special Magistrate.
5. The following condition exists on the Property:

WORK WITHOUT PERMIT- ROOF

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 6-111, Adopting FBC 105.1.
2. Based upon the competent substantial evidence presented at the hearing, the Special Magistrate of the Town of Fort Myers Beach has determined that this Order of Enforcement is hereby warranted.

C. ORDER/IMPOSITION OF FINE:

1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$75.00 in administrative costs and fees.
3. Property shall not be occupied and Respondent is ordered to immediately cease rentals due to possible life safety hazards.
4. Respondent is ordered to correct the violation by:

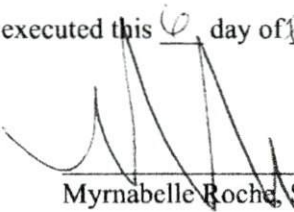
OBTAINING A PERMIT FOR ROOF

5. If the violation has been corrected, the amount ordered by the Special Magistrate for administrative costs and fees in the amount of \$75.00 is still ordered.
6. In the event that the said violation is not corrected **WITHIN 30 DAYS** a fine of **\$250.00 per day** shall be imposed against Respondent and the Property, beginning on that date and continuing for each day that the aforesaid violation continues to exist.
7. In the event that the violation is not corrected by the above mentioned date and/or the costs ordered herein have not been paid, a hearing to impose a lien against all

real and personal property of Respondent for the amount ordered will be held before the Special Magistrate on **April 16, 2020**, at 10:30 a.m. at Town Hall, 2525 Estero Blvd., Fort Myers Beach, FL, and could result in a foreclosure action.

8. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 30th day of January, 2020, and executed this 6 day of January ²⁰²⁰ 2019.


Myrabelle Roche, Special Magistrate

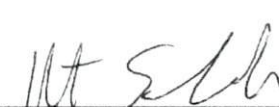
APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

Pursuant to Chapter 162.09 (3), Florida Statutes, A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon and other real or personal property owned by the violator.

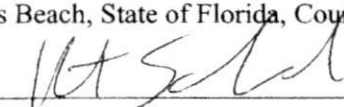
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 11 day of February, 2020 to:

Dania Carballo Ortiz and Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: 
2/11/2020

Page 3 of 3

EXHIBIT G

PARCEL #: 20-046-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0724

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on September 17, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.
2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

3. The NOV specified that Respondent was required to correct the violation by a time certain, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and on January 30, 2020, a hearing took place at which competent substantial evidence was entered into the record. Accordingly, the Town of Fort Myers Beach Special Magistrate ("Special Magistrate") entered an Order of Enforcement finding the Respondent in violation of Section 6-111, Adopting FBC 105.1 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, not paid the accrued fine in the amount of \$56,000.00, which began to accrue on March 1, 2020, and continues to accrue in the amount of \$250.00 per day, nor paid the administrative fee/cost of prosecution in the amount of \$75.00.
6. Due to noncompliance with the Order of Enforcement, a Notice of Hearing was served on the Respondent stating a hearing to impose lien would take place on September 17, 2020.

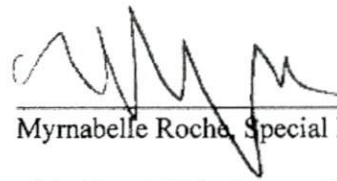
B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$56,075.00, has accrued as of the date of this hearing and continues to accrue in the amount of \$250.00 per day for every day that Respondent is in non-compliance with the Order of Enforcement previously entered in this case.
2. This Order may be recorded in the public records of Lee County, Florida or in any other county in the State of Florida where Respondent owns property and if so recorded shall constitute a lien against the Property and any other real or personal property that Respondent owns in Lee County or other county in the State of Florida.
3. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 17th day of September, 2020 and executed this 30 day of SEP, 2020.



Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 10 day of October, 2020 to:

Dania Carballo Ortiz + Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

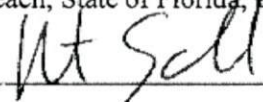
BY: 
Dated _____

EXHIBIT H



Town of Fort Myers Beach

NOTICE OF VIOLATION AND NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

August 26, 2020

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

**ORTIZ DANIA CARBALLO + GARCIA
581 DE LEON DR
MIAMI SPRINGS, FL 33166,**

Respondent.

Case Number:	CE20-0597
Certified Mail:	7019 1120 0000 0849 8936
Regular Mail:	8/26/2020

Site Address: **268/270 NATURE VIEW CT**
Parcel Strap No.: **204624W4017000050**

NOTICE OF REPEAT VIOLATION AND NOTICE OF CODE ENFORCMENT HEARING

YOU ARE HEREBY NOTIFIED that, on **2/19/2020**, *Repeat- Rentals for Less Than One (1) Week* was identified as a violation of the Town's Codes.

LDC Sec. 34-2391 Weekly Rental Restrictions in certain zoning districts. Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the "Restricted" sub-group of the "Lodging" use group in Table 34-1).

(2) Dwelling units on property that qualifies for any of these exceptions may be rented to a single-family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Due to this being a repeat violation, you are hereby directed to bring these violations into compliance immediately.

The violation(s) can be brought into compliance by discontinuing renting for less than one week.

This matter will therefore be heard before the Town's Code Enforcement Special Magistrate on:



Town of Fort Myers Beach

NOTICE OF VIOLATION AND NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

9/17/2020 at 11:00 A.M. in the Council Chambers at Town Hall, located at 2525 Estero Boulevard, Fort Myers Beach, Florida.

NO ADDITIONAL NOTICE OF THE HEARING WILL BE PROVIDED TO YOU. If you fail to attend this hearing, the Code Enforcement Special Magistrate will consider the case, even though you are not present, and may assess fines or take other actions that will affect your rights. This is the only Notice of this hearing that you will receive. Please govern yourself accordingly.

Please be aware that under Florida Statutes chapter 162 and Town of Fort Myers Beach Land Development Code Section 2-427(b) a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues or is repeated. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation(s) has been corrected or abated prior to the hearing.

Kristin
Schumacher
Code Enforcement Officer
Town of Fort Myers Beach

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202 EXT 1400, WITHIN 2 WORKING DAYS PRIOR TO THE MEETING DATE.

EXHIBIT I

PARCEL #: 20-46-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE20-0597

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

AMENDED CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on September 17, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz and Daisy Garcia, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds, and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.
2. The Respondent was served with a Notice of Violation ("NOV")/Notice of Hearing ("NOH") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

3. The NOV/NOH stated that Respondent was required to correct the violation by a specified amount of time, but Respondent failed to do so.
4. The NOV/NOH further stated if compliance was not obtained by the specified amount of time, Respondent was required to appear before the Special Magistrate.
5. The following violation exists on the Property:

REPEAT- RENTALS FOR LESS THAN (1) ONE WEEK

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 34-2391. Weekly Rental Restrictions.
2. Based upon the competent substantial evidence presented at the hearing, the Special Magistrate of the Town of Fort Myers Beach has determined that this Order of Enforcement is hereby warranted.

C. ORDER/IMPOSITION OF FINE:

1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$75.00 in administrative costs and fees.
3. Respondent is fined \$500.00 for each of the 12 repeat violations for a total of \$6,000.00.
4. Respondent is ordered to correct the violation by:

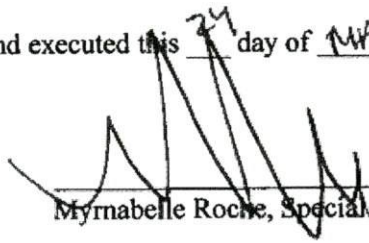
DISCONTINUE RENTALS IMMEDIATELY UNTIL PERMITTING ISSUES ARE RESOLVED. ONCE RESOLVED, ADHERE TO RC ZONING REGULATIONS BY RENTING TO A SINGLE-FAMILY FOR A MINIMUM STAY OF ONE WEEK.

5. In the event that the said violation is not corrected **IMMEDIATELY** a fine of **\$500.00 occurrence** shall be imposed against Respondent and the Property, beginning on that date and continuing for each day that the aforesaid violation continues to exist.
6. In the event that the violation is not corrected by the above-mentioned date and/or the costs ordered herein have not been paid, a hearing to impose a lien against all real and personal property of Respondent for the amount ordered will be held before

the Special Magistrate on **May 20, 2021**, at 11:00 a.m. at Town Hall, 2525 Estero Blvd., Fort Myers Beach, FL, and could result in litigation in Circuit Court.

7. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 17th day of September, 2020, and executed this 24 day of MARCH, 2021.


Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

Pursuant to Chapter 162.09 (3), Florida Statutes, A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon and other real or personal property owned by the violator.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 26 day of March, 2021 to:

Dania Carballo Ortiz & Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: _____

Date

3/26/2021

EXHIBIT J

PARCEL #: 20-46-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE20-0597

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on May 20, 2021, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz and Daisy Garcia, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds, and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 3

3. The NOV specified that Respondent was required to correct the violation by a time certain, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and on September 17, 2020, a hearing took place at which competent substantial evidence was entered into the record. Accordingly, the Town of Fort Myers Beach Special Magistrate ("Special Magistrate") entered an Order of Enforcement finding the Respondent in violation of Section 34-2391 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, has incurred a fine of \$500.00 for each occurrence of the 24 violations, for a total of \$12,000.00, nor paid the administrative fee/cost of prosecution in the amount of \$75.00.
6. Due to noncompliance with the Order of Enforcement, a Notice of Hearing was served on the Respondent stating a hearing to impose lien would take place on March 18, 2021.

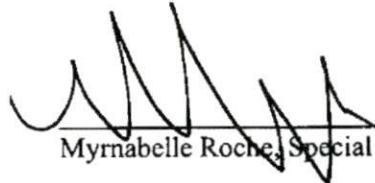
B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$12,075.00, has accrued as of the date of this hearing due to non-compliance with the Order of Enforcement previously entered in this case.
2. This Order may be recorded in the public records of Lee County, Florida or in any other county in the State of Florida where Respondent owns property and if so, recorded shall constitute a lien against the Property and any other real or personal property that Respondent owns in Lee County or other county in the State of Florida.
3. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 20th day of May, 2021, and executed this 26 day of May, 2021.


Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

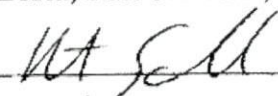
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 1 day of June, 2021 to:

Dania Carballo Ortiz & Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: 
Dated 6/1/2021



Dania Carballo Ortiz Daisy Garcia
268/270 Nature View Ct
Fort Myers Beach, FL 33931

RE: Request for Code Enforcement Lien Reduction – CE 20-0597

Dear Ms. Ortiz & Ms. Garcia:

This letter is a sufficiency determination and recommendation regarding your request for a lien reduction in accordance with Section 2-432 of the Town of Fort Myers Beach Code of Ordinances. Based on the Town's records, the amount of the lien is \$12,075.00 as of March 1, 2024. There is no daily fine.

Section 2-432(a)(2) of the Town of Fort Myers Beach Code of Ordinances provides that if a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the property, the violator/property owner may apply for a reduction of the lien by providing a written application to the town manager. I am in receipt of your application filed on October 17, 2023, a copy of which is attached as Exhibit A.

The Code requires the application to include specific information, which has been reviewed for sufficiency by Town Staff. Staff comments are underlined below:

a. A copy of the order imposing a lien upon the property: A copy of the lien recorded on March 30, 2021, as Instrument 2021000098239 is included in Exhibit A. The lien is based on an order by the Special Magistrate, who found 24 violations regarding short term rental occurring at property located at 268/270 Nature View Court, Fort Myers Beach, Florida.

b. The code enforcement case number: CE 20-0597.

c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the Town Code: Based on information in CE 20-0597, 24 separate violations occurred and compliance was achieved on May 20, 2021.

d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted: Financial hardship based on illness, no manpower, financial constraints and a pending mortgage default.



e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted: The owner requests forgiveness of 96% of the lien.

f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded: Illness, no manpower, financial constraints.

g. The amount of the reduction in penalty or fine requested by the violator/property owner: The owner requests forgiveness of 96% of the lien.

h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default: The property owner claims there is an existing mortgage with Regions Bank in the amount of \$305,000, executed on August 8, 2013, which is currently in default for \$46,000.

i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal: Additional documents in support of the applicant's request are included in Exhibit A; and

j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager or designee: The application was properly submitted.

Section 2-432(3) requires payment of a \$200 administrative fee, which was paid.

Section 2-432(4) requires confirmation of compliance prior to presentation of a request for a lien reduction to the Town Council. As stated above, the violation has been corrected.

Based on my review, this letter is my written approval of the sufficiency of your lien reduction application, which will be forwarded to the Town Council for review on March 18, 2024 in accordance with the following criteria found in Section 2-432 and my recommendation of denial for the reasons highlighted below:

a. The gravity of the violation(s): The short-term rental violation posed a nuisance to the neighbors by allowing guests to stay for less than the minimum time allowed.;



b. The amount of time it took the violator/property owner to come into compliance Since 2019 there have been 2 other cases with violations found. This was an ongoing violation for the property:

c. The accrued amount of the code enforcement lien as compared to the market value of the property: The fine in the amount of \$12,075.00 is nominal compared to the market value of the property, which is actively being marketed for sale for \$1,599,900.

d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action; Per the application, there is a mortgage on the property where \$341,000.00, including the amount in default, is owed.

e. Any previous code violation(s) of applicant/owner; This particular property owner also has 2 other liens pending foreclosure: CE-0700, remodel without permit (upper level), is a violation that is still not in compliance and daily fines continue to accrue. CE18-0724, is for unpermitted roofing, but is now in compliance with an accrued fine.

f. Consideration for the future or proposed use of the property for public purpose N/A; and

g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida: This is the only property Dania Carballo and Daisy Garcia own in Lee County.

Sincerely,

Andrew Hyatt, Town Manager

Instrument Prepared by and Return to:
Fort Myers Beach Code Enforcement
2731 Oak Street
Fort Myers Beach, Florida 33931

**TOWN OF FORT MYERS BEACH, FLORIDA
CODE ENFORCEMENT**

AFFIDAVIT OF COMPLIANCE

**STATE OF FLORIDA)
COUNTY OF LEE)**

BEFORE ME, the undersigned authority, personally appeared Kristin Schumacher, a designee for the Town of Fort Myers Beach, FL, and served as a "Code Inspector" as defined by section 162.04, Florida Statutes to assure compliance with the Town of Fort Myers Beach, deposes and says:

1. On the 19th day of February, 2020, Dania Carballo Ortiz and Daisy Garcia (property owners) was found in violation of the Town of Fort Myers Beach Ordinance No. 34-2391, (Weekly rental restrictions in certain Zoning districts. Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the "restricted" subgroup of the "lodging" use group in table 34-1). (2) Dwelling units on property that qualifies for any of these exceptions may be rented to a single-family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.) at the property located at 268/270 Nature View Ct, Fort Myers Beach, FL 33931 ("Subject Property") by virtue of a Code Enforcement Order by the Special Magistrate in Case No. CE20-0597, which was adjudicated on the 17th day of September, 2020.

2. The Order was recorded as Instrument No. 2021000098239 on the 30th day of March, 2021 in the public records of Lee County, Florida. Dania Carballo Ortiz and Daisy Garcia were given 0 days to come into compliance with the Special Magistrate's Order, which was on or before the 17th day of September, 2020.

3. According to available records in possession of the Town of Fort Myers Beach, an inspection of the Subject Property was performed by a Code Inspector on the 20th day of May, 2021, and the Subject Property was found in compliance.

4. No further action has been taken by the Town of Fort Myers Beach regarding this violation, which was corrected as stated above.

5. Code Enforcement Case No. CE20-0597 will be closed once fines/liens are paid in full.

6. I have personal knowledge of all these facts based on my review of records in possession of the Town of Fort Myers Beach, Florida.

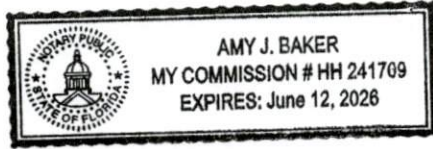
FURTHER AFFIANT SAYETH NOT.

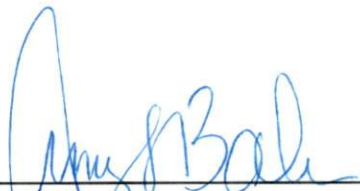
Signed on this 13 day of March, 2024.

Kristin Schumacher
Print Name: Kristin Schumacher
Code Inspector (Designee)

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 13 day of March, 2024 by Kristin Schumacher, as Designee, who is personally known to me or has produced _____ as identification.





Signature of Notary

Amy J Baker

(Name typed, printed or stamped)

My Commission expires: _____

1. **Request:**

Meeting Date: March 18, 2024

Lien Reduction Request for CE18-0700

Why the action is necessary:

An application for a lien reduction was received from Dania Carballo Ortiz. The lien was recorded and attached to the property owned by Dania Carballo Ortiz and Daisy Garcia.

What the action accomplishes:

Lien reduction or denial

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

Frankie Kropacek, Operations &
Compliance Director

5. **Background:**

Based on the Town's records, the amount of the lien is \$365,575.00 as of March 1, 2024. The property was in non-compliance from February 29, 2020, to March 1, 2024 (1,462 days) at \$250 per day, plus a \$75.00 administrative fee and remains in noncompliance.

Section 2-432(a)(2) of the Town of Fort Myers Beach Code of Ordinances provides if a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the property, the violator/property owner may apply for a reduction of the lien by providing a written application to the town manager. The application filed on October 17, 2023, is attached as Exhibit A.

The Code requires the application to include specific information which has been reviewed for sufficiency by Town Staff. Staff comments are underlined below:

a. A copy of the order imposing a lien upon the property: A copy of the lien recorded on October 7, 2020 as Instrument 202000024 is included in Exhibit A. The lien is based on an order by the Special Magistrate, a violation for unpermitted work completed on the entire house including exterior work after the fire located at 268/270 Nature View Court, Fort Myers Beach, Florida, which was not remedied by the compliance date.

b. The code enforcement case number: CE 18-0700.

c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town Code: Based on information in CE 18-0700, the code violation remains in noncompliance as a permit for work done on the upper level including exterior work has not been obtained. A permit was obtained for work on the lower floor on November 11, 2023, which was completed in January 2024, and is now in compliance.

d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted: You are claiming financial hardship based on illness, loss due to Hurricane Ian and a pending mortgage default:

e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted: The owner requests forgiveness of 100% of the lien.

f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded: Illness, no manpower, financial constraints.

g. The amount of the reduction in penalty or fine requested by the violator/property owner: The owner requests forgiveness of 100% of the lien.

h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default: The property owner claims there is an existing mortgage with Regions Bank

in the amount of \$305,000, executed on August 8, 2013, which is currently in default.

i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal: Additional documents in support of the applicant's request are included in Exhibit A; and

j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager or designee: The application was properly submitted.

Section 2-432(3) requires payment of a \$200 administrative fee, which was paid.

Section 2-432(4) requires confirmation of compliance prior to presentation of a request for a lien reduction to the Town Council. As stated above, the property remains in noncompliance due to the lack of permitting for construction on the upper level of the house.

Attachments:

1. Exhibit A Sec 2-432- Procedure to obtain reduction and-or release of a code enforcement lien
2. Exhibit A CE18-0700 268-270 Nature View Ct Lien Reduction Request
3. Exhibit ACE18-0700 Letter of Sufficiency and Affidavit of Noncompliance

Financial Impact:

6. Alternative Action

Approve lien reduction request.

7. Management Recommendations:

Deny lien reduction request since the violation which resulted in the order imposing the penalty or fine has not been brought into full compliance as required by Section 2-432(4) of the Town of Fort Myers Beach Code of Ordinances. Because this property is still not in compliance, the fine continues to accrue at \$250 per day. Furthermore, this lien is included in the pending foreclosure case initiated by the Town.

8. Recommended Approval:

Kristin Schumacher, Flood Plain Supervisor
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/13/2024
Approved - 3/13/2024
Approved - 3/13/2024
Approved - 3/13/2024
Final Approval - 3/13/2024

Sec. 2-432. - Procedure to obtain reduction and/or release of a code enforcement lien.

- (a) Where a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the land and/or property of the violator/property owner, such violator/property owner may apply for a release of such lien as follows:
- (1) Upon full payment by the violator/property owner of the fine or penalty imposed as a result of a code enforcement action, the town manager or designee is hereby authorized to execute and record, at the property owner's expense, a release of lien.
 - (2) Upon request for a reduction or forgiveness of a fine or penalty that constitutes a lien resulting from a code enforcement action, the violator/property owner shall submit a written application to the town manager or designee. The application shall include the following:
 - a. A copy of the order imposing a lien upon the property;
 - b. The code enforcement case number;
 - c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town Code;
 - d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted;
 - e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;
 - f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded;
 - g. The amount of the reduction in penalty or fine requested by the violator/property owner;
 - h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default;
 - i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal; and
 - j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager designee.
 - (3) The violator/property owner shall submit, at the time of application, an application fee in the amount of \$200.00 to reimburse the town for its administrative costs associated with handling the application and recording the order imposing a penalty or fine and the requested release of lien. The application cost is non-refundable, without regard to the final disposition of the application for reduction, forgiveness and release of lien.

- (4) Upon receipt of the application for release of lien and the payment provided above, the town manager, or designee, shall confirm through the code enforcement division that the violation which resulted in the order imposing the penalty or fine has been brought into full compliance.
- (5) The town manager, or designee, shall then review and consider the status of the application for release of lien with respect to the following:
 - a. If a property owner acquired the property after the code enforcement lien was recorded, a waiver or reduction of lien may not be granted because the lien should have been identified and satisfied by the property owner at the time of purchase of the property.
 - b. If a title insurance policy was issued at the time the property was purchased and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien may not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction or waiver would place the town in the position of indemnifying the title insurer against its losses, which losses are the result of negligent examination of title by the title insurer.
 - c. A request for waiver or reduction in lien may not be granted if the town council has previously reduced the amount of the lien. This statement applies whether or not the request is received from the original applicant for reduction or from a subsequent applicant who acquired the property.
- (6) If the town manager or designee determines that the request falls within any one of the above factual situations, the town manager or designee shall issue a written denial of the request for reduction or forgiveness. If the applicant desires to appeal the town manager's decision to the town council, the applicant may do so by filing a written appeal with the town manager stating the reason(s) why the town council should make an exception to its established guidelines and consider a reduction or forgiveness of the lien. Upon filing of a proper appeal, the town manager shall present the information to the town council at a regular meeting for their consideration and final determination.
- (7) If the town manager or designee determines that the request does not fall within any of the above factual situations and therefore qualifies for possible reduction or forgiveness, the town manager or designee shall review the request further. The town manager or designee, in formulating a recommendation on whether to reduce the amount of the lien or forgive the lien entirely, shall consider the following factors:
 - a. The gravity of the violation(s);
 - b. The amount of time it took the violator/property owner to come into compliance;
 - c. The accrued amount of the code enforcement lien as compared to the market value of the property;

- d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action;
 - e. Any previous code violation(s) of applicant/owner;
 - f. Consideration for the future or proposed use of the property for public purpose; and
 - g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida.
- (8) The town manager or designee shall place the application for satisfaction or release of lien upon the agenda of a regularly scheduled town council meeting. The town council may take action based solely upon the sworn application, recommendation of the town manager or designee and the applicant shall have opportunity to address the town council as to the factors he or she believes warrant reduction or waiver of lien in considering the application for satisfaction or release of lien.
- (9) The town council may reduce the amount of the lien, waive the full amount of the lien or continue the lien in its full amount and may accept, modify or reject the recommendations of the town manager or designee.
- (10) Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the town council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall be come null and void and the full amount of the lien shall be due and payable.
- (11) When a lien is satisfied as a result of full payment, reduced payment or waiver as ordered by the town council, the town shall record the satisfaction/release of lien in the public records of Lee County, Florida and provide a copy to the property owner.

(Ord. No. 12-05, § 3, 6-18-2012)



Exhibit A

Town of Fort Myers Beach

CODE ENFORCEMENT LIEN REDUCTION REQUEST APPLICATION (ord. 12-05)

A copy of the order imposing the lien must be submitted with this application. A non-refundable \$200.00 application fee will be due at the time the application is submitted.

Code Enforcement Case Number: CE18-0700

Date: October 8, 2023

Date Subject Property was brought into Compliance with Town Code: as per FMB Attorney in progress
Permit #235112

Reasoning for reduction (factual):

Due to significant financial hardship following devastation of Ian. Financial hardship has been compounded with limitation of insurance pay out which has left me with considerable strain on my already limited financial resources. The permits are attached for the remodel and roof. I am in urgent need to close on the property sale on November 9, 2023 to pay Regions mrtg. and this fine as well as all the debt I have incurred since the hurricane to survive and to fix the property up to code.

Reasoning compliance not accomplished by time lien was recorded:

combination of illness, lack of manpower and financial constraints compounded the challenges faced in achieving compliance. I relied on help from friends and family who left me in worse situation, these factors lead to delays and a complete halt in compliance activities resulting in noncompliance being recorded before necessary action could be completed.

Amount of reduction requested: 100% reduction and balance to be paid immediately to City

Outstanding Mortgage Information. Please include date(s) recorded and whether currently in default.
Regions Mortgage amount due \$305,000.00 plus ten months default as of today \$46,000.00 and legal fees

Recorded 08-08-2013 currently in default

All documents or other evidence that supports reduction request must be included in the application.

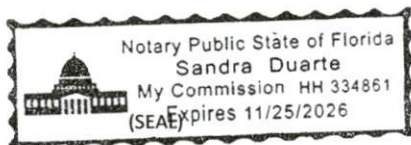
Applicant Signature: [Signature]

Date: October 8, 2023

Applicant Printed Name: Dania Carballo Ortiz

**STATE OF FLORIDA)
COUNTY OF LEE)**

Subscribed and sworn to (or affirmed) before me this 12 day of Oct.,
2023, by Dania Iraida Carballo



[Signature]
Notary Public Signature

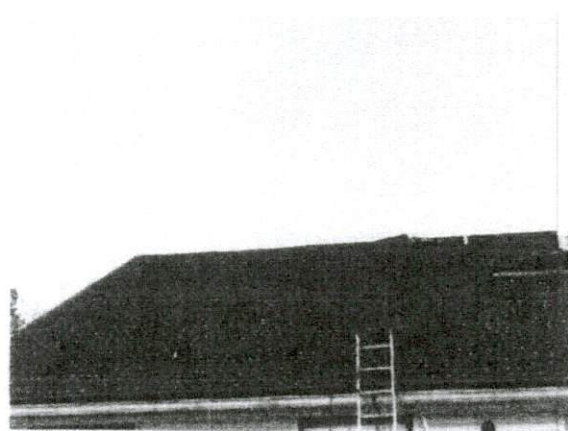
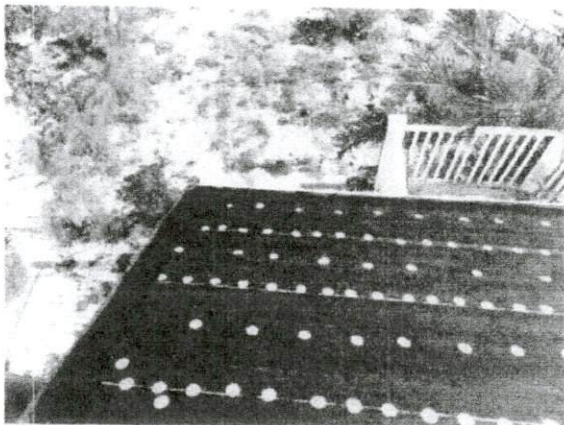
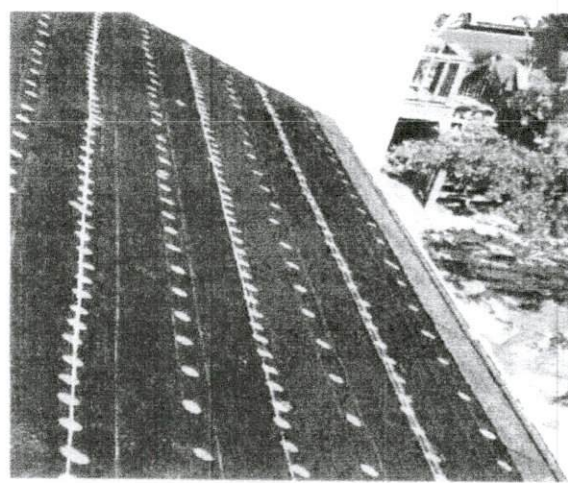
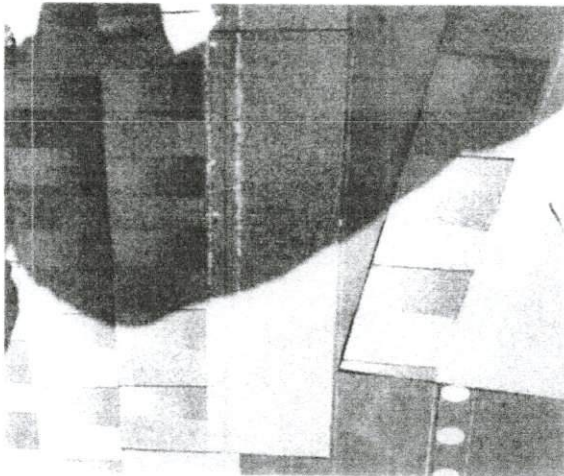
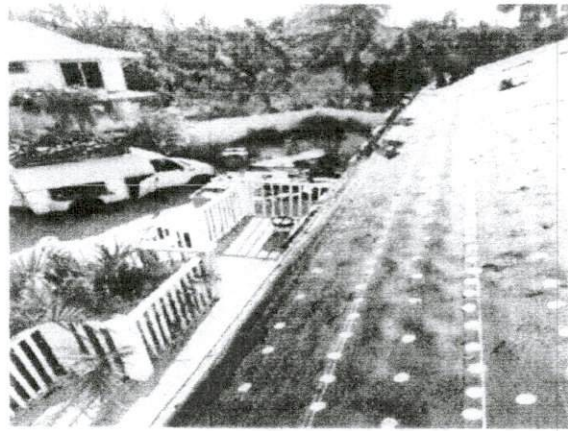
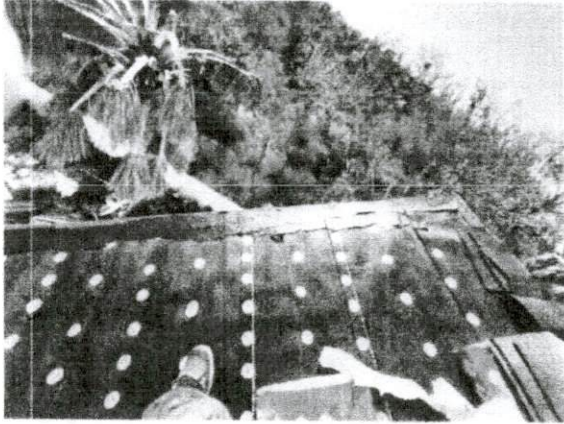
Sandra Duarte
Notary Printed Name

Personally Known _____ or Produced Identification ✓

Type of Identification Produced: FDL 806-0

My Commission Expires: 11/25/26

YP BEST SERVICES
12170 SW 128th Ct Ste 101, Miami, FL 33186
Office: (786) 231-8143 Cell: (786) 231-8143
Email: ypbestservices@gmail.com
Laboratory Certification No. 22-0120.06



[← Go Back](#) Permit #233238

Permit Information:

Permit Date:	04/18/2023	Scope of Work:	shingle reroof
Sub Type:	Roof/Reroof/Roofover	Project Cost:	9,000
Type of Construction:		Square Feet:	1,800
Type of Occupancy / Use:	Residential	Issued Date:	04/18/2023
Contractor Business	Triple J Roofing Inc. DBA 3J	Expiration Date:	10/18/2023
Name/Applicant:	Construction	Finale Date:	
Contractor/Applicant Email:	Jacosta@3jroofing.com	Assigned To:	
Contractor/Applicant Phone	3052837081	Status:	ISSUED
#:			
Current Use:	r		
Proposed Use:	r		

Contractors:

Triple J Roofing Inc. DBA 3 J CONstruction - [Certified Roofing](#), FL 33173
Primary Contact: Joe Acosta

Property Information:

Parcel #: 204624W4017000050
268/270 NATURE VIEW CT
FORT MYERS BEACH, 33931

Inspections:

Roof - Roof Inspect Affidavit- need prior to scheduling 501 Roof Dry In	Open -
Scheduled Date:	Completed Date:

Roof - 501 Roof Dry In	Open -
Scheduled Date:	Completed Date:

Roof - 503 Roof Final	Open -
Scheduled Date:	Completed Date:

Plan Reviews:

04/18/2023 - Review Flood Date: 04/18/2023	DONE - Andrew Garry Completed Date: 04/18/2023

04/18/2023 - Review FMB Application Date: 04/18/2023	DONE - Andrew Garry Completed Date: 04/18/2023

04/18/2023 - Notice of Commencement Date:	REQUIRED - Completed Date:

YP BEST SERVICES

12170 SW 128th Ct. Ste 101. Miami, FL 33186

Office: (786) 231-8143 Cell: (786) 231-8143

Email: ypbestservices@gmail.com

Laboratory Certification No. 22-0120.06

TO: Building Department Official **Contractor:** Triple J Roofing
FROM: Alaym Aguilar, P.E. **Permit #:**
FL Reg. No. 92154
DATE: June 30, 2023
RE: 268-270 Nature View Ct Fort Myers Beach, FL 33931

Dear Building official:

Our firm has been retained to perform the Shingle Inspection for the above mentioned project. A representative from our office inspected the job site during installation at the above referenced location, and the following are the findings:

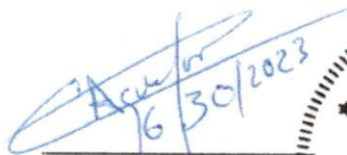
Roof system: Gable Roof

Based on the visual inspection we hereby certify that was used Base #30 underlayment nailed on laps @4" O.C at corners, 6" O.C at perimeter and @7" O.C in field with 1-1/4" ring shank nails through 1-5/8" tin caps 3" side lap and 6" end lap. Reflect Drip Metal 3"x3" galvanized 26 ga was installed with 1-1/4" ring shank nails @ 4" O.C. There were 6 nails per shingle starting 1" from edge of shingle and ending with the 6 nail placed 1" from edge of shingle.

"This report is not to be construed as warranty on the roof. To the best of my knowledge and ability, this report represents an accurate appraisal of the present condition of the "inspected part of the building" based upon careful evaluation of observed conditions, to the extent reasonably possible."

I hereby certify that the installation of the roof framing system referred above complies with the minimum requirements as set forth by **Florida Building Code 2020 (7th Ed)**.

Should you have any questions or need additional information, please do not hesitate to contact me.
Sincerely,


Alaym Aguilar, P.E.
Lic. No. 92154





STATE OF FLORIDA
LEE COUNTY PROPERTY APPRAISER
MATTHEW H. CALDWELL

Mailing Address:
P.O. Box 1546
Fort Myers, Florida 33902-1546

Physical Address:
2480 Thompson Street
Fort Myers, Florida 33901-3074



Telephone: (239) 533-6100

Website: www.leepa.org

July 20, 2023

10228578

ORTIZ DANIA CARBALLO +
581 DE LEON DR
MIAMI SPRINGS, FL 33166

Re: 2022 Tax Roll Value & FEMA 50% Rule

268/270 NATURE VIEW CT FORT MYERS BEACH 33931
20-46-24-W4-01700.0050

In the chart below you will find the most recent values from the 2022 ad valorem tax roll. These values represent the Lee County Property Appraiser's determination of Just Value for ad valorem tax purposes.

	JUST VALUE
Total Value	\$788,325
Land Value	\$204,100
Land Extra Features Value	\$0
Building Value	\$534,948
Building Extra Features Value	\$49,277

Further, the FEMA 50% rule calls for the use of "market value" in determining "substantial improvement" and the Lee County Commission has adopted a definition of market value which includes "...or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser...", and the "Building Value" listed above will likely meet the needs of most owners. Please note that these are allocated values, developed as of January 1, 2022, and they may not reflect the current value of your property. If you believe that our conclusions and methods are not useful for your purposes, I encourage you to consult an independent professional.

Please be advised that we are providing this information as a proactive courtesy and this letter serves as an official copy of our records for the parcel listed above as of the effective date of this letter. I hope this letter is helpful to you as you evaluate the process of recovering from the impacts of Hurricane Ian.

Sincerely,


Hon. Matthew H. Caldwell

Your request has been submitted.

← Go Back Request #641965217

Request Information:

Request #:	641965217
Request Date:	08/02/2023
Status:	
Sub Type:	Remodel
Contractor/Applicant Name:	Pedro E. Fernandez
Contractor/Applicant Phone:	7867782887
Contractor/Applicant Email:	dania00000@aol.com
Contractor Business Name:	SPF Contracting Group LLC

[Accessibility](#)

Permit #235112

paid 830⁰⁰

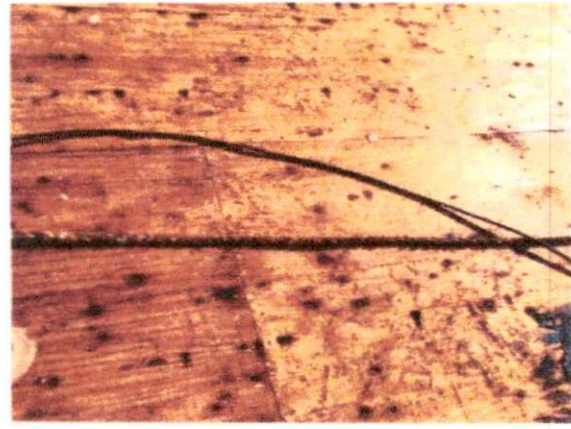
YP BEST SERVICES

12170 SW 128th Ct. Ste 101. Miami, FL 33186

Office: (786) 231-8143 Cell: (786) 231-8143

Email: ypbestservices@gmail.com

Laboratory Certification No. 22-0120.06



Fees:

* MISC- DBPR & DCA Admin Fees:	\$4.00 - Paid
RES - Roof, Reroof, Roofover, Insulated Pan Roof (2020):	\$300.00 - Paid
Total Fees:	\$304.00
Amount Due:	\$0.00

Payments:

Date:	Amount:	Type:	Paid By:
04/18/2023	\$304.00		Joe Acosta
Amount Paid:	\$304.00		

Letters:

04/18/2023 - Building Permit [Print](#)

Uploaded Files:

- [noa.pdf](#)
- [_high_velocity_hurricane_zone_uniform_permit_application_.pdf](#)
- [_permit_application.pdf](#)

[Accessibility](#)

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Email: ypbestservices@gmail.com

Laboratory Certification No. 22-0120.06





JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF WORKERS' COMPENSATION

**** CERTIFICATE OF ELECTION TO BE EXEMPT FROM FLORIDA WORKERS' COMPENSATION LAW ****

CONSTRUCTION INDUSTRY EXEMPTION

This certifies that the individual listed below has elected to be exempt from Florida Workers' Compensation law.

EFFECTIVE DATE: 2/5/2022

EXPIRATION DATE: 2/5/2024

PERSON: PEDRO E FERNANDEZ

EMAIL: PEDROF726@GMAIL.COM

FEIN: 843843747

BUSINESS NAME AND ADDRESS:

SPF CONTRACTING GROUP, LLC

4900 SW 63RD AVENUE

MIAMI, FL 33155

SCOPE OF BUSINESS OR TRADE:

Contractor-Project Manager,
Construction Executive,
Construction Manager or
Construction Superintendent

IMPORTANT: Pursuant to subsection 440.05(14), F.S., an officer of a corporation who elects exemption from this chapter by filing a certificate of election under this section may not recover benefits or compensation under this chapter. Pursuant to subsection 440.05(12), F.S., Certificates of election to be exempt issued under subsection (3) shall apply only to the corporate officer named on the notice of election to be exempt and apply only within the scope of the business or trade listed on the notice of election to be exempt. Pursuant to subsection 440.05(13), F.S., notices of election to be exempt and certificates of election to be exempt shall be subject to revocation if, at any time after the filing of the notice or the issuance of the certificate, the person named on the notice or certificate no longer meets the requirements of this section for issuance of a certificate. The department shall revoke a certificate at any time for failure of the person named on the certificate to meet the requirements of this section.

YP BEST SERVICES

12170 SW 128th Ct. Ste 101. Miami, FL 33186

Office: (786) 231-8143 Cell: (786) 231-8143

Email: ypbestservices@gmail.com

Laboratory Certification No. 22-0120.06





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/14/2023

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 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		CONTACT NAME: Munro Insurance Services LLC	
Munro Insurance Services		PHONE (A/C, No, Ext): 760-621-3844	FAX (A/C, No):
1155 Sportfisher Dr. Suite 140		E-MAIL ADDRESS: certs@munroinsuranceservices.com	
Oceanside CA 92054		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Sutton Specialty Insurance Company	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	
INSURED		NAIC # 16848	
SPF Contracting Group, LLC			
4900 SW 63rd Ave			
Miami FL 33155-6200			

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	Y	Y	ISCP04000000314	2/18/2023	2/18/2024	EACH OCCURRENCE \$ 1,000,000
	☒ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 1,000,000
	☒ POLICY ☐ PRO-JECT ☐ LOC						
	OTHER:						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ANY AUTO						BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	☐ SCHEDULED AUTOS						
	☐ NON-OWNED AUTOS						
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	☐ OCCUR						
	☐ CLAIMS-MADE						
	DED RETENTION \$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						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**CANCELLATION**

LEE COUNTY CONTRACTOR LICENSING	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
P.O. Box 398	AUTHORIZED REPRESENTATIVE
Fort Myers FL 33902	<i>Daniel Munro</i>

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Local Business Tax Receipt

Miami-Dade County, State of Florida

-THIS IS NOT A BILL - DO NOT PAY



7295465

RECEIPT NO.

RENEWAL

7585074

BUSINESS NAME/LOCATION
SPF CONTRACTING GROUP
LLC

4900 SW 63RD AVE
MIAMI, FL 33155-6200



EXPIRES
SEPTEMBER 30, 2023

Must be displayed at place of business

Pursuant to County Code

Chapter 8A - Art. 9 & 10

OWNER
SPF CONTRACTING GROUP LLC
C/O PEDRO E FERNANDEZ MGR

Worker(s) 1

SEC. TYPE OF BUSINESS

196 GENERAL BUILDING
CONTRACTOR

CGC1528651

**PAYMENT RECEIVED
BY TAX COLLECTOR**

45.00 07/13/2022

INT-22-359152

This Local Business Tax Receipt only confirms payment of the Local Business Tax. The Receipt is not a license, permit, or a certification of the holder's qualifications, to do business. Holder must comply with any governmental or nongovernmental regulatory laws and requirements which apply to the business.

The RECEIPT NO. above must be displayed on all commercial vehicles - Miami-Dade Code Sec 8a-276.

For more information, visit www.miamidade.gov/taxcollector





**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

2601 BLAIR STONE ROAD
TALLAHASSEE FL 32399-0783

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



**STATE OF FLORIDA DEPARTMENT
OF BUSINESS AND PROFESSIONAL
REGULATION**

CGC1528651
CERTIFIED GENERAL CONTRACTOR
FERNANDEZ, PEDRO ESTEBAN
SPF CONTRACTING GROUP LLC

ISSUED: 07/20/2022

Signature

LICENSED UNDER CHAPTER 489, FLORIDA STATUTES
EXPIRATION DATE: AUGUST 31, 2024

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD**

LICENSE NUMBER: CGC1528651

EXPIRATION DATE: AUGUST 31, 2024

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

FERNANDEZ, PEDRO ESTEBAN
SPF CONTRACTING GROUP LLC
4900 SW 63RD AVE
MIAMI FL 33155



ISSUED: 07/20/2022

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

Scope of Work

To: Ft Myers Beach Building Department

Re: 268-270 Nature View Court

Attached are the documents pertaining to my interior remodel permit application.

1. Detailed scope of work:

I will be restoring the property to pre hurricane condition with no additions or alterations to the floor plan.

Throughout the entire home:

Replace= all drywall, all fiberglass insulation, all interior doors, all 4 inch baseboards, all cabinets (kitchen and bath), all tile flooring. Showers were not damaged. Replace all ceiling lights and fans with like for like replacements. A new HVAC unit. A new front door.
A separate Re-Roof permit has already been issued.

2. Layout: No additions or alterations to the floor plan

3. Location of all electrical and plumbing changes: n/a no changes, only like for like replacements. All outlets exposed to surge will be replaced.

4. Windows Doors NOA: N/A for this interior remodel permit
When we get insurance payments we will get new windows and a permit at that time.

5. Repair/improvement cost form: included

6. Certified design professional: N/A no structural component changes.

7. Floor plan attached

8. NOC will be recorded on county records, sent to Town of Ft Myers Beach and posted on Job site.

Dania Carballo Ortiz
Owner
268/270 Nature View Court
FMB FL 33931
7867782887

dania ~~xxxxxx~~ @ aol.com

[illegible]

EXISTING LAYOUT / Hurricane Ian Remodel Permit

NO CHANGES TO EXISTING LAYOUT.



REPAIR/IMPROVEMENT COST FOM

Job Address: 268-270 Nature View Court FMB FL 33931
Property Owner: Dania Carballo Ortiz STRAP #: 20.46.24.W4.01700.0050
Owner's Phone: 786.778.2887 Email: dania.ortiz@aol.com
Contractor: SPF Contracting Group LLC License #: CEC 1528651
Contact Person: Pedro Fernandez Email: PEPPEF26@gmail.com
Contractor Phone: 786.778.8417 Construction Value: 44,650⁰⁰

OWNER'S AFFIDAVIT

I hereby attest that the description included in the permit application for the work on the existing building that is located at the property identified above is all of the work that will be done, including all improvements, rehabilitation, remodeling, repairs, additions, and any other form of improvement. I further attest that I requested the above-identified contractor to prepare a cost estimate for all of the work, including the contractor's overhead and profit. I acknowledge that if, during the course of construction, I decide to add more work or to modify the work described, that the Town of Fort Myers Beach will re-evaluate its comparison of the cost of work to the market value of the building to determine if the work is substantial improvement. Such re-evaluation may require revision of the permit and may subject the property to additional requirements.

I also understand that I am subject to enforcement action and/or fines if inspection of the property reveals that I have made repairs or improvements that were not included in the description of work and the cost estimate for that work that were the basis for issuance of a permit.

I, Dania Carballo (Property Owner), hereby certify that _____ is my authorized agent/representative of the property described herein. All answers to the questions in this registration and any supplementary information attached to and made part of this registration is honest and true.

[Signature]
Signature of Property Owner

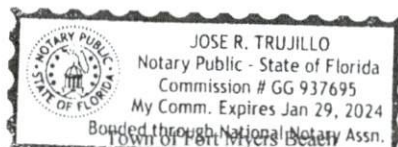
Dania Carballo
Typed or printed name of Property Owner

STATE OF FL COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence

OR online notarization, this 24th day of 2023, by _____, ☐ who is

personally known to me OR ☒ who has produced _____ as identification.



[Signature]
Notary Public Signature



Qualifier Acknowledgement

This page is required for ALL Building Permit Applications

ACKNOWLEDGEMENT OF TOWN OF FORT MYERS BEACH REGULATIONS BY THE QUALIFIER

NOTICE OF ADDITIONAL RESTRICTIONS: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this County, and there may be additional permits required from other governmental entities such as the Water Management District, State agencies, or Federal agencies. I acknowledge that any demolition or renovation of an existing structure must comply with Florida Statutes s. 69.003, Florida Building Code, and any other relevant regulations, including state and federal law. I understand that I am responsible for notifying the Department of Environmental Protection in advance of any intentions to remove asbestos, when applicable, in accordance with state and federal law.

WARNING OF WORK IN THE COUNTY RIGHT-OF-WAYS: This permit does not authorize construction or installation of any structure or utility, above or below ground, within any right of way or easement reserved for access, drainage or utility purposes. This restriction specifically prohibits fencing, sprinkler systems, landscaping other than sod, signs, water, sewer, cable and drainage work therein. If such improvements are necessary, a separate permit for that purpose must be obtained from the Building Department.

INSPECTIONS: This permit is void if the first inspection is not made within six (6) months from the date issued or if no inspection has been made for a period of six (6) months from the most recently passed inspection. The permit is void if the zoning classification is violated. Applicant agrees to comply with the sanitary regulations and understands that the proposed structure may not be used or occupied until an approved certificate of occupancy is issued. Applicant further understands that failure to obtain permit or misrepresentation of the improvements is a misdemeanor and upon conviction, applicant can be punished as provided by the law. Failure to comply with the mechanics lien law can result in the property owner paying twice for improvements.

NOTICE OF CLEARING RESTRICTIONS: Issuance of a Demolition Permit for a structure does not authorize removal of vegetation beyond the footprint of the structure. A Demo Permit is not a clearing permit.

WORK IN THE SPECIAL FLOOD HAZARD AREA: Be advised that Substantial Damage/Substantial Improvement requirements will apply to structures located in the Special Flood Hazard Area with Finished Floor Elevations below the Base Flood Elevation.

CERTIFICATION: Application is hereby made to obtain a permit to do the work and installations as indicated. I, THE QUALIFIER, certify that I have not performed any work or installation prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. The permit or application fee may have additional fees imposed for failing to obtain permits prior to commencement of construction. The permit application or approved permit expires if work is not commenced within 180 days from the date of issuance. I, THE QUALIFIER understand that the structure cannot be used or occupied until a certificate of occupancy is issued. By signing this permit application, I, THE QUALIFIER, agree that I have been retained by the property owner to provide contracting services for the trade for which I am listed. Furthermore, it is my responsibility to notify the Building Plan Review and Inspection Division should I no longer be THE QUALIFIER responsible for providing said contracting services. I, THE QUALIFIER, agree that I understand the review and issuing of this permit does not exempt me from complying with all County Codes and Ordinances.

NOTICE OF COMMENCEMENT INFORMATION Per Florida Statutes 713.135 a Notice of Commencement (NOC) is required for construction of improvements totaling more than \$2,500, with certain exceptions. For A/C Repairs or Replacements a notice of commencement is required for improvements more than or equal to \$15,000. The applicant shall file with the issuing authority prior to the first inspection either a certified copy of the recorded NOC or a notarized statement that the NOC has been filed for recording, along with a copy thereof. In order to comply with the state requirement, permits will be placed in inspection hold until proof of the NOC is filed with the building permitting and inspection department. The issuing authority shall not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, email or any other means such as a certified copy with the issuing authority.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

Job Street Address: 7102 S.W. Nature View Court FMB, FL 33931

I, Pedro E Fernandez (Qualifier), hereby certify that all answers to the questions in this registration and any supplementary information attached to and made part of this registration is honest and true.

Pedro E Fernandez
Typed or printed name of Qualifier

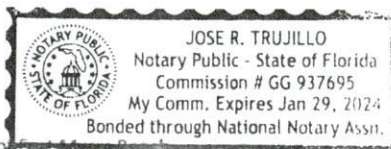
SPF Contracting Corp

[Signature]
Signature of Qualifier

STATE OF FL COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 24 day of July, 2023, by Pedro E Fernandez who is personally known to me OR who has produced as identification.

[Signature]
Notary Public Signature





INTERIOR REMODEL APPLICATION

(Select One) ☒ Single family/ Duplex ☐ Condo unit

Job Information:

Owner Name: Daniela D. Garcia Phone # 786-778-2887
Owner Email: daniela00080@gmail.com
Owner Mailing Address (if different): 581 DE LEON DRIVE Miami Springs 33166
STRAP #: 20-46-24-W4-01700-0050
Job Address: 268-270 Nature View Court Fort Myers Beach, FL 33931, Lee County

Contractor's Information:

Contractor Business Name: SPF Contracting Corp License #: CGB1528651
Qualifiers Name: Pedro Fernandez Email: PEDROF26@GMAIL.COM
Phone# 305-778-8417 Address: 4900 SW 63 Ave. Miami FL 33155
Scope of work: Hurricane Ian Remodel First floor water damage
Remodel sqft: 1,200 SF Estimated cost value: 40,660.00 *if over \$2500 a NOC is required

An electronic set of plans consisting of the following in PDF format must be included with the application: (Some items may not apply)

- 1) Detailed scope of work.
- 2) Site plan/floor plan. If the layout is being modified in any way, an existing floor plan and a proposed floor plan indicating all proposed layout changes.
- 3) Location of all electrical and plumbing changes.
- 4) If replacing exterior windows or doors, complete the Exterior Windows or Doors Worksheet. Provide Notice of Acceptance (NOA's) or State of Florida product approval numbers. The products must meet design pressure and sea turtle ordinance requirements.
- 5) Repair/ improvement cost form is required if job value is equal to, or greater than, \$2,500.
- 6) Plans (signed and sealed by a Florida certified design professional), if there are changes to structural components
- 7) Sub-contractor confirmation forms must be submitted prior to scheduling inspections.

Regulations and Information

1. The Town of Fort Myers Beach Building Services is regulated by the Florida Building Code 7th Edition (2020). For more information about the code or to purchase the code, visit www.floridabuilding.org
2. To be an owner builder you must maintain the home as your residence for a minimum of one year after CO. You must be present for the permitting process, the construction process, the inspection process, and at CO.
 - a. Properties by a Trust, Corporation, or LLC cannot submit owner builder permits.
 - b. Condo units must hire licensed contractors for any work being done.
3. Work being done in a condo association may require the association's approval.
 - a. Any exterior work such as windows/ doors/ shutters will be required to submit a copy of the association approval to the Building Department.
4. It is the contractor's responsibility to contact the Building Department when all final inspections are complete and obtain a Certificate of Occupancy or a Certificate of Completion.



Owner Acknowledgement

This page is required for ALL Building Permit Applications

ACKNOWLEDGEMENT OF TOWN OF FORT MYERS BEACH REGULATIONS BY OWNER OR AUTHORIZED AGENT OF OWNER

NOTICE OF ADDITIONAL RESTRICTIONS: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that maybe found in the public records of this County, and there may be additional permits required from other governmental entities such as the Water Management District, State agencies, or Federal agencies. I acknowledge that any demolition or renovation of an existing structure must comply with Florida Statutes s. 469.003, Florida Building Code, and any other relevant regulations, including state and federal law. I understand that I am responsible for notifying the Department of Environmental Protection in advance of any intentions to remove asbestos, when applicable, in accordance with state and federal law.

WARNING OF WORK IN THE COUNTY RIGHT-OF-WAYS: This permit does not authorize construction or installation of any structure or utility, above or below ground, within any right of way or easement reserved for access, drainage or utility purposes. This restriction specifically prohibits fencing, sprinkler systems, landscaping other than sod, signs, water, sewer, cable and drainage work therein. If such improvements are necessary, a separate permit for that purpose must be obtained from the Building Department.

INSPECTIONS: This permit is void if the first inspection is not made within six (6) months from the date issued or if no inspection has been made for a period of six (6) months from the most recently passed inspection. The permit is void if the zoning classification is violated. Applicant agrees to comply with the sanitary regulations and understands that the proposed structure may not be used or occupied until an approved certificate of occupancy is issued. Applicant further understands that failure to obtain permit or misrepresentation of the improvements is a misdemeanor and upon conviction, applicant can be punished as provided by the law. Failure to comply with the mechanics lien law can result in the property owner paying twice for improvements

NOTICE OF CLEARING RESTRICTIONS: Issuance of a Demolition Permit for a structure does not authorize removal of vegetation beyond the footprint of the structure. A Demolition permit is not a clearing permit.

WORK IN THE SPECIAL FLOOD HAZARD AREA: Be advised that Substantial Damage/Substantial Improvement requirements will apply to structures located in the Special Flood Hazard Area with Finished Floor Elevations below the Base Flood Elevation.

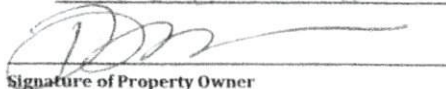
CERTIFICATION: Application is hereby made to obtain a permit to do the work and installations as indicated. I, THE OWNER OR AUTHORIZED AGENT OF OWNER, certify that I have not performed any work or installation prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. The permit or application fee may have additional fees imposed for failing to obtain permits prior to commencement of construction. The permit application or approved permit expires if work is not commenced within 180 days from the date of issuance. I, THE OWNER OR AUTHORIZED AGENT OF OWNER understand that the structure cannot be used or occupied until a certificate of occupancy is issued. By signing this permit application, I, THE OWNER OR AUTHORIZED AGENT OF OWNER, agree that I have been retained by the property owner to provide contracting services for the trade for which I am listed. Furthermore, it is my responsibility to notify the Building Plan Review and Inspection Division should I no longer be THE OWNER OR AUTHORIZED AGENT OF OWNER responsible for providing said contracting services. I, THE OWNER OR AUTHORIZED AGENT OF OWNER, agree that I understand the review and issuing of this permit does not exempt me from complying with all State and local County Codes and Ordinances.

NOTICE OF COMMENCEMENT INFORMATION Per Florida Statutes 713.135 a Notice of Commencement (NOC) is required for construction of improvements totaling more than \$2,500, with certain exceptions. For A/C Repairs or Replacements a notice of commencement is required for improvements more than or equal to \$15,000. The applicant shall file with the issuing authority prior to the first inspection either a certified copy of the recorded NOC or a notarized statement that the NOC has been filed for recording, along with a copy thereof. In order to comply with the state requirement, permits will be placed in inspection hold until proof of the NOC is filed with the building permitting and inspection department. The issuing authority shall not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, email or any other means such as certified copy with the issuing authority.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

Job Street Address:

2680 270 NATURE VIEW COURT FMBPC 33931



Signature of Property Owner

Daniel Carballo

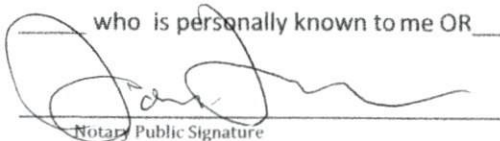
Typed or printed name of Property Owner

STATE OF FL COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence

OR ☐ online notarization, this 26th day of July, 2023, by Pedro A. Fernandez

who is personally known to me OR ☐ who has produced _____ as identification.



Notary Public Signature

If An Owner Agent is Being Named, Please complete below

I, _____ (Property Owner), hereby certify that _____ is my authorized AUTHORIZED AGENT/representative of the property described herein. All answers to the questions in this registration and any supplementary information attached to and made part of this registration is honest and true.



REPAIR/IMPROVEMENT COST FORM

Job Address: 2608-210 Highway View Court FMB 10 33731

Property Owner: L. J. J. J. J. STRAP #: 20-46-24-104-01700-0050

This cost estimate of reconstruction/improvement must be prepared by and signed by the contractor or by the owner if the owner acts as the contractor. Owners who act as their own contractors must estimate their labor cost as the current market value for any work they intend to perform, including construction supervision costs.

	Sub-Contractor Bids	Contractor Or Owner Estimates	
	Bid Amounts	Material Costs	Labor Costs
1. Masonry / Concrete			
2. Carpentry Material (rough)			
3. Combined Labor			
4. Roofing <i>ON Separate Permit *</i>			
5. Insulation and Weather-strip		1200	600
6. Exterior Finish (Stucco)			
7. Doors, Windows & Shutters			
8. Lumber Finish / Trim Carpentry		5,500	1,000
9. Hardware		400	100
10. Drywall		3,000	7,000
11. Cabinets & Countertops (Built-in)		6,000	2,500
12. Floor Covering			
13. Plumbing		350	200
14. Shower / Tub / Toilet		100	100
15. Electrical & Light Fixtures		900	1,000
16. Concrete			
17. Built-in Appliances			
18. HVAC		2,000	1,000
19. Paint		1,600	2,500
20. Demolition & Removal			3,500
21. Overhead and Profit			2,500
22. Other: <i>FENCE Separate Permit *</i>			
Subtotals	0	18,650 0	22,000 0
Total Estimate Cost (all three subtotals added together)		40,650.00	

- A. A copy of the signed construction contract must be attached to this form.
- B. Subcontractor bids may be used for any item of material and/or labor cost breakdown.
- C. Cost backup must be provided for every line item entry.
- D. If any amounts appear in the "Sub-Contractor" column, a copy of each signed and dated bid must accompany this form. For all other costs, you must list the quantity of materials to be installed and their unit cost on a separate sheet that references the line number.

IN THE CIRCUIT COURT OF THE 20TH
CIRCUIT, IN AND FOR LEE COUNTY,
FLORIDA

CASE NO. _____

TOWN OF FORT MYERS BEACH,
FLORIDA

Plaintiff,

vs.

DANIA CARBALLO ORTIZ and
DAISY GARCIA

Defendants.

_____ /

COMPLAINT TO FORECLOSE MUNICIPAL LIENS

Plaintiff, Town of Fort Myers Beach, a Florida municipal corporation (the "Town"), by and through its undersigned counsel, sues Defendants, Dania Carballo Ortiz, and Daisy Garcia, and alleges:

SUBJECT MATTER, PARTIES, AND VENUE

1. This is an action to foreclose three (3) municipal code enforcement liens on real property located in Lee County, Florida.

2. The Town is authorized by the State of Florida to create a code enforcement board or code enforcement special magistrate position, establish a code enforcement system, and hold hearings and assess fines against violators to promote, protect, and improve the health, safety, and welfare of the business owners, residents, and visitors of the Town. *See* Chapter 162, Florida Statutes.

3. The Town is a Florida municipal corporation located in Lee County, Florida, and organized under the laws of the State of Florida.

4. Defendants reside in Miami-Dade County, Florida, and are otherwise *sui juris*.
5. Venue is proper because the real property at issue is located in Lee County, Florida, and the causes of action set forth herein arose or accrued in Lee County.
6. This Court has subject matter jurisdiction over this action pursuant to Fla. Stat. § 26.012 and Fla. Stat. § 162.30.
7. This Court has personal jurisdiction over Defendants under Fla. Stat. § 48.193(2) because Defendants are Florida residents owning real property in the state.
8. Defendants own and possess certain real property in Lee County, Florida, located at 268/270 Nature View Court, Fort Myers Beach, Florida 33931 (the "Property"). The Property is legally described as follows:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, and the Public Records of Lee County, Florida.
9. Defendants obtained ownership of the Property on August 8, 2013, through a Warranty Deed recorded on August 12, 2013 at Official Records Instrument No. 2013000185758 of the Public Records of Lee County, Florida. A copy of the Deed is attached hereto as **Exhibit "A"** and incorporated herein by reference.
10. The Property is not a homestead under the laws of the State of Florida.
11. All conditions precedent to the bringing of this action has been performed, have been waived, have been executed, or have occurred.
12. The Town is obligated to pay its attorneys a reasonable fee for their services and Defendants are responsible for the liens and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances ("Town Code"), Article V, Sec. 2-427(d).

COUNT I
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE18-0700)

13. The Town repeats and realleges Paragraphs 1 through 12 of the Complaint as if fully set forth herein.

14. This is an action to foreclose on a municipal code enforcement lien entered against the Property under Case No. CE18-0700.

15. On or about August 15, 2018, the Town issued a Notice of Violation to Defendants for remodeling the Property, without permits, after it suffered significant fire damage, in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1, which states: "Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit." A copy of the Notice of Violation is attached hereto as **Exhibit "B"** and incorporated herein by reference.

16. The Notice of Violation specified that Defendants were required to correct the violations by a certain date, but Defendants failed or refused to do so.

17. As a result of Defendants' failure or refusal to correct the violations, the Town scheduled a code compliance hearing for January 30, 2020, and served Defendants with a notice of hearing for same.

18. On January 30, 2020, a Special Magistrate for the Town held a duly noticed public hearing related to the violations. Defendants appeared at the hearing and had the

opportunity to present testimony, evidence, and arguments in their defense.

19. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the Property was remodeled without permits in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1 of same.

20. The Special Magistrate ordered that the "Property shall not be occupied and [Defendants are] ordered to immediately cease rentals due to possible life safety hazards," that Defendants must correct the violation by "obtaining a permit for remodel," and, if the violations were not corrected within 30 days, a fine of \$250.00 per day would be imposed and continue to accrue against Defendants and the Property until the Property was brought into compliance.

21. The Code Enforcement Order was entered on January 30, 2020, executed on February 6, 2020, and a copy was recorded on February 18, 2020, at Official Records Instrument No. 2020000042776 in the public records of Lee County, Florida. A copy of the Code Enforcement Order is attached hereto as **Exhibit "C"** and incorporated herein by reference.

22. Despite the Special Magistrate's orders, Defendants continued to fail or refuse to obtain a permit for the remodel or otherwise bring the Property into compliance.

23. Due to Defendants' continued failure or refusal to bring the Property into compliance or otherwise comply with the Code Enforcement Order, the Town scheduled a hearing for September 17, 2020, to impose a fine and lien against the Property and served Defendants with a notice of hearing for same.

24. On September 17, 2020, a Special Magistrate for the Town held a duly noticed public hearing to consider entering an order imposing a fine and lien against the Property.

Defendants again had the opportunity to appear before the Special Magistrate to present testimony, evidence, and arguments in their defense, but failed to appear.

25. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order Imposing Lien, finding that Defendants failed to comply with the Code Enforcement Order, failed to pay the accrued fine of \$56,000.00, and failed to pay the administrative fee of \$75.00. The Special Magistrate certified that a fine of \$56,075.00 had accrued through September 17, 2020, and that the fine would continue to accrue in the amount of \$250.00 per day until the Property was brought into compliance.

26. The Code Enforcement Order Imposing Lien was entered on September 17, 2020, executed on September 30, 2020, and recorded on October 7, 2020, at Official Records Instrument No. 2020000241616 in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing Lien is attached hereto as **Exhibit "D"** and incorporated herein by reference.

27. Defendants were afforded 30 days to appeal the Code Enforcement Order and the Code Enforcement Order Imposing Lien, from the respective dates of execution, but failed to do so. Accordingly, the Code Enforcement Order and Code Enforcement Order Imposing Lien are final, non-appealable orders.

28. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as "Lien 1," constitutes a valid and enforceable lien against the Property and any other real or personal property owned by Defendants.

29. Through August 12, 2022, the Lien 1 secures a total of \$229,575.00 in accrued fines, which continue to accrue at \$250.00 per day.

COUNT II
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE18-0724)

33. The Town repeats and realleges Paragraphs 1 through 12 of the Complaint.

34. This is an action to foreclose on a municipal code enforcement lien entered against the Property under Case No. CE18-0724.

35. On or about August 15, 2018, the Town issued a Notice of Violation to Defendants for repairing or replacing the roof for a building at the Property, without permits, after the Property suffered significant fire damage, in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1, which states: "Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit." A copy of the Notice of Violation is attached hereto as **Exhibit "E"** and incorporated herein by reference.

36. The Notice of Violation specified that Defendants were required to correct the violations by a certain date, but Defendants failed or refused to do so.

37. As a result of Defendants' failure or refusal to correct the violations, the Town scheduled a code compliance hearing for January 30, 2020, and served Defendants with a notice of hearing for same.

38. On January 30, 2020, a Special Magistrate for the Town held a duly noticed public hearing related to the violations. Defendants appeared at the hearing and had the

opportunity to present testimony, evidence, and arguments in their defense.

39. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the roof was repaired or replaced without permits and the Property was in violation of Section 6-111 of the Town's Land Development Code, adopting the Florida Building Code, including Section 105.1.

40. The Special Magistrate further ordered that the "Property shall not be occupied and [Defendants are] ordered to immediately cease rentals due to possible life safety hazards," that Defendants must correct the violation by "obtaining a permit for roof," and, if the violations were not corrected within 30 days, a fine of \$250.00 per day would be imposed and continue to accrue against Defendants and the Property until the Property was brought into compliance.

41. The Code Enforcement Order was entered on January 30, 2020, executed on February 6, 2020, and a copy was recorded on February 18, 2020, at Official Records Instrument No. 2020000042777 in the public records of Lee County, Florida. A copy of the Code Enforcement Order is attached hereto as **Exhibit "F"** and incorporated herein by reference.

42. Despite the Special Magistrate's orders, Defendants continued to fail or refuse to obtain a permit for the roof or otherwise bring the Property into compliance.

43. Due to Defendants' continued failure or refusal to bring the Property into compliance or otherwise comply with the Code Enforcement Order, the Town scheduled a hearing for September 17, 2020, to impose a fine and lien against the Property and served Defendants with a notice of hearing for same.

44. On September 17, 2020, a Special Magistrate for the Town held a duly noticed public hearing to consider entering an order imposing a fine and lien against the Property.

Defendants again had the opportunity to appear before the Special Magistrate to present testimony, evidence, and arguments in their defense, but failed to appear.

45. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order Imposing Lien, finding that Defendants failed to comply with the Code Enforcement Order, failed to pay the accrued fine of \$56,000.00, and failed to pay the administrative fee of \$75.00. The Special Magistrate certified that a fine of \$56,075.00 had accrued through September 17, 2020, and that the fine would continue to accrue in the amount of \$250.00 per day until the Property was brought into compliance.

46. The Code Enforcement Order Imposing Lien was entered on September 17, 2020, executed on September 30, 2020, and recorded on October 7, 2020, at Official Records Instrument No. 2020000241617, in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing is attached hereto as **Exhibit “G”** and incorporated herein by reference.

47. Defendants were afforded 30 days to appeal the Code Enforcement Order and the Code Enforcement Order Imposing Lien, from the respective dates of execution, but failed to do so. Accordingly, the Code Enforcement Order and Code Enforcement Order Imposing Lien are final, non-appealable orders.

48. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as “Lien 2,” constitutes a valid and enforceable lien against the Property and any other real or personal property owned by Defendants.

49. Through August 12, 2022, the Lien 2 secures a total of \$229,575.00 in accrued fines, which continue to accrue at \$250.00 per day.

30. As of the date of this Complaint, the Property has not been brought into compliance.

31. The amount due for Lien 1 remains wholly unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining necessary parties to this action.

32. At the meeting of the Town Council on April 18, 2022, the Town Council authorized the undersigned counsel to enforce and foreclose on Lien 1.

WHEREFORE, the Town respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the Property for the full amount due pursuant to Lien 1, including the principal, all accrued interest, attorney's fees and costs, and other expenses, and if such sums are not paid within the time set by the Court, that the Property be sold to satisfy the amounts owed to the Town;

(b) Order that Defendants, and all persons, partnerships, corporations, or entities claiming by, through or under the Defendants since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the Property;

(c) That the proceeds of any sale resulting here from, if any, be applied to reduce the indebtedness due under Lien 1;

(d) Order that Defendants are responsible for Lien 1 and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Such other and further relief as the Court deems just and proper.

50. As of the date of this Complaint, the Property has not been brought into compliance.

51. The amount due for Lien 2 remains wholly unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining necessary parties to this action.

52. At the meeting of the Town Council on April 18, 2022, the Town Council authorized the undersigned counsel to enforce and foreclose on Lien 2.

WHEREFORE, the Town respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the Property for the full amount due pursuant to Lien 2, including the principal, all accrued interest, attorney's fees and costs, and other expenses, and if such sums are not paid within the time set by the Court, that the Property be sold to satisfy the amounts owed to the Town;

(b) Order that Defendants, and all persons, partnerships, corporations, or entities claiming by, through or under the Defendants since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the Property;

(c) That the proceeds of any sale resulting here from, if any, be applied to reduce the indebtedness due under the Lien 2;

(d) Order that Defendants are responsible for Lien 2 and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Such other and further relief as the Court deems just and proper.

COUNT III
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE20-0597)

53. Plaintiff repeats and realleges Paragraphs 1 through 12 of the Complaint.

54. This is an action to foreclose on a municipal code enforcement lien entered against the Property under Case No. CE18-0700.

55. On or about August 26, 2020, the Town issued a Notice of Violation to Defendants for related to short-term rentals at the Property in violation of Section 34-2391 of Town's Land Development Code, which "restricts the rental of any permitted dwelling unit in certain zoning districts to a single-family during any one-month period, with a minimum stay of one week" A copy of the Notice of Violation is attached hereto as **Exhibit "H"** and incorporated herein by reference.

56. The Notice of Violation specified that Defendants were required to correct the violations by a certain date, but Defendants failed or refused to do so.

57. As a result of Defendants' failure or refusal to correct the violations, the Town scheduled a code compliance hearing for September 17, 2020, and served Defendants with a notice of hearing for same.

58. On September 17, 2020, a Special Magistrate for the Town held a duly noticed public hearing related to the violations. Although they had the opportunity to attend the hearing and present testimony, evidence, and arguments in their defense, Defendants failed to appear.

59. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the Defendants were renting the property for durations of less than one-week and were repeat violators of Section 34-2391 of the Town's Land Development Code.

60. The Special Magistrate further ordered that Defendants “discontinue rentals immediately until permitting issues are resolved, once resolved, adhere to RC Zoning Regulations by renting to a single-family for a minimum stay of one week,” assessed a fine in the amount \$6,000, assessed administrative costs and fees in the amount of \$75.00, and ordered that fines of \$500.00 per occurrence would be assessed for continued violations.

61. The Code Enforcement Order was originally entered on September 17, 2020, executed on September 30, 2020, and recorded on October 7, 2020, at Official Records Instrument No. 2020000241612 in the public records of Lee County, Florida. The Order was later amended by that certain Amended Code Enforcement Order, entered on September 17, 2020, executed on March 24, 2021, and recorded on March 30, 2021, at Official Records Instrument No. 2021000098239 in the public records of Lee County, Florida. A copy of the Amended Code Enforcement Order is attached hereto as **Exhibit “I”** and incorporated herein by reference.

62. Despite the Special Magistrate’s orders, Defendants continued to fail or refuse to cease short-term rentals for durations of less than one-week and continued to rent the Property prior to resolving permitting issues (as discussed in Counts I and II) in violation of the Amended Code Enforcement Order.

63. Due to Defendants’ continued failure or refusal to bring the Property into compliance or otherwise comply with the Amended Code Enforcement Order, the Town scheduled a hearing for May 20, 2021, to impose a fine and lien against the Property and served Defendants with a notice of hearing for same.

64. On May 20, 2021, a Special Magistrate for the Town held a duly noticed public hearing to consider entering an order imposing a fine and lien against the Property. Defendants again had the opportunity to appear before the Special Magistrate to present testimony, evidence,

and arguments in their defense, but failed to appear.

65. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order Imposing Lien, finding that Defendants failed to comply with the Code Enforcement Order, failed to pay the applicable fines, and continued to violate Section 34-2391 of the Town's Land Development Code. The Special Magistrate certified that a fine of \$12,075.00 had accrued through May 20, 2021.

66. The Code Enforcement Order Imposing Lien was entered on May 20, 2021, executed on May 26, 2021, and recorded on June 2, 2021, at Official Records Instrument No. 2021000182144 in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing Lien is attached hereto as **Exhibit "J"** and incorporated herein by reference.

67. Defendants were afforded 30 days to appeal the Code Enforcement Order, the Amended Code Enforcement Order, and the Code Enforcement Order Imposing Lien, from the respective dates of execution, but failed to do so. Accordingly, the Code Enforcement Order, Amended Code Enforcement Order, and Code Enforcement Order Imposing Lien are final, non-appealable orders.

68. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as "Lien 3," constitutes a valid and enforceable lien against the Property and any other real or personal property owned by Defendants.

69. Lien 3 secures a total of \$12,075.00 in accrued fines.

70. As of the date of this Complaint, the Property has not been brought into compliance.

71. The amount due for Lien 3 remains wholly unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining

necessary parties to this action.

72. At the meeting of the Town Council on April 18, 2022, the Town Council authorized the undersigned to enforce and foreclose on Lien 3.

WHEREFORE, the Town respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the Property for the full amount due pursuant to Lien 3, including the principal, all accrued interest, attorney's fees and costs, and other expenses, and if such sums are not paid within the time set by the Court, that the Property be sold to satisfy the amounts owed to the Town;

(b) Order that Defendants, and all persons, partnerships, corporations or entities claiming by, through, or under the Defendants since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the Property;

(c) That the proceeds of any sale resulting herefrom, if any, be applied to reduce the indebtedness due under the Lien 3;

(d) Order that Defendants are responsible for Lien 3 and all costs of foreclosure including reasonable attorney's fees incurred by Town in this action pursuant to Section 162.10, Florida Statutes, and the Town's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOX ROTHSCHILD LLP

Attorneys for Plaintiff

One Biscayne Tower, Suite 2750

2 South Biscayne Boulevard

Miami, Florida 33131

Telephone: 305 442-6547

By: /s/ John R. Herin

JOHN R. HERIN, JR.
Florida Bar No.: 907928
jherin@foxrothschild.com
Sec.Email:jpoli@foxrothschild.com
VICTOR SANABRIA, Esq.
Florida Bar No.: 125292
Vsanabria@foxrothschild.com
BROOKE STEWART, Esq.
Florida Bar No.: 1032231
BStewart@Foxrothschild.com

EXHIBIT A

Prepared by and Return Recorded Original to:

Charles R. Meador, Jr., Attorney at Law
2085 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 463-6619
Facsimile: (239) 463-6454

Property Appraiser Parcel I.D. No. 20-46-24-W4-01700.0050
Grantee Taxpayer I.D. No. _____
Documentary Stamp Tax on Transfer: \$2520

Reserved For Recorder

(STATUTORY FORM - Section 689.02, F.S.)

WARRANTY DEED

THIS WARRANTY DEED, made this 8 day of August, A.D.
2013, between ALVA T. ARGO and DEBORAH A. ARGO, Husband and wife, whose post
office address is 270 Nature View Court, Fort Myers Beach, FL 33931, hereinafter called
Grantor, and DANIA CARBALLO ORTIZ and DAISY GARCIA, whose post office address is
129 Palmetto Drive, Miami Springs, FL 33166, hereinafter called Grantee.

WITNESSETH, That said Grantor, for and in consideration of the sum of Ten and
No/100's Dollars (\$10.00), and other good and valuable consideration, to said Grantor in hand
paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and
sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land,
situate, lying and being in Lee County, Florida, to-wit:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in
Plat Book 30, at Pages 102 and 103, of the Public Records of Lee County, Florida.

SUBJECT TO easements, restrictions and reservations of record and taxes for the current
and subsequent years.

and said Grantor does hereby fully warrant the title to said land, and will defend the same against
lawful claims of all persons whomsoever.

*"Grantor" and "Grantee" are used for singular and plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and
year first above written.

Reserved For Recorder

Signed in the presence of:

Charles R. Meador
Charles R. Meador
 #1 Witness Name - print or type

Deborah Miller
Deborah Miller
 #2 Witness Name - print or type

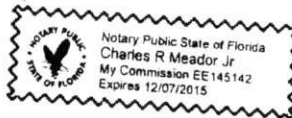
Alva T. Argo (SEAL)
 ALVA T. ARGO

Deborah A. Argo (SEAL)
 DEBORAH A. ARGO

STATE OF Florida
 COUNTY OF Lee

EXECUTION OF the foregoing instrument was acknowledged before me this 8
 day of August, 2013, by ALVA T. ARGO and DEBORAH A. ARGO,
 Husband and wife, who is (CHECK ONE OF THE FOLLOWING AS APPLICABLE) []
 personally known to me, or ☒ who has produced (Florida Driver License) as
 identification.

Charles R. Meador Jr.
 NOTARY PUBLIC - SIGNATURE ABOVE
 NOTARY NAME - Charles R. Meador Jr.
 COMMISSION NO. - _____
 COMMISSION EXP. DATE - _____
 (Notary Name/Commission No./Exp. Date - typed or printed)



(Notary Seal)

EXHIBIT B



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

8/15/2018

ORTIZ DANIA CARBALLO + GARCIA
581 DE LEON DR
MIAMI SPRINGS, FL 33166

CASE NUMBER:	CE18-0700
CERTIFIED MAIL:	7018 0680 0000 1523 2722

SITE ADDRESS: **268/270 NATURE VIEW CT**
PARCEL STRAP NO: **204624W4017000050**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **8/13/2018** by Town of Fort Myers Beach Code Enforcement Officer **MOLLY JACOBS** indicates that the following items are a violation:

Work w/out Permit - Remodel

These items are a violation of the following Town Codes:

LDC Sec 6-111 The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law.

FBC 105.1 Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

You are hereby directed to abate or remedy these violations within 30 days of receipt of this notice.

***The violation(s) can be abated or corrected by taking the following actions:
Secure required permit and associated inspections.***



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

ONCE YOU HAVE ABATED OR CORRECTED THE VIOLATIONS, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED BY A CODE OFFICER TO VERIFY THAT THE VIOLATION(S) HAVE BEEN ABATED OR CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) abated and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 476-2467 for Molly Jacobs or (239) 218-4830 for Joe Kontomanolis if you have any questions concerning this Notice of Violation.

Respectfully,

MOLLY JACOBS

Code Enforcement Officer
Town of Fort Myers Beach

Received By: _____ Date: _____

EXHIBIT C

PARCEL #: 20-46-24-W4-01700.0050

This Document Prepared By and Return To:

Town of Fort Myers Beach Code Enforcement Department

2525 Estero Blvd.

Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0700

ORTIZ, DANIA CARBALLO + GARCIA, DAISY T/C,

Respondent.

CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on January 30, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz, present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 3

3. The NOV specified that Respondent was required to correct the violation by a specified amount of time, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and therefore, this case is properly before the Special Magistrate.
5. The following condition exists on the Property:

WORK WITHOUT PERMIT-REMODEL

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 6-111, Adopting FBC 105.1.
2. Based upon the competent substantial evidence presented at the hearing, the Special Magistrate of the Town of Fort Myers Beach has determined that this Order of Enforcement is hereby warranted.

C. ORDER/IMPOSITION OF FINE:

1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$75.00 in administrative costs and fees.
3. Property shall not be occupied and Respondent is ordered to immediately cease rentals due to possible life safety hazards.
4. Respondent is ordered to correct the violation by:

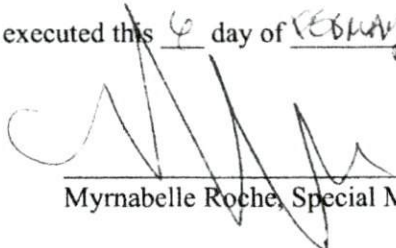
OBTAINING A PERMIT FOR REMODEL

5. If the violation has been corrected, the amount ordered by the Special Magistrate for administrative costs and fees in the amount of \$75.00 is still ordered.
6. In the event that the said violation is not corrected **WITHIN 30 DAYS**, a fine of **\$250.00 per day** shall be imposed against Respondent and the Property, beginning on that date and continuing for each day that the aforesaid violation continues to exist.
7. In the event that the violation is not corrected by the above mentioned date and/or the costs ordered herein have not been paid, a hearing to impose a lien against all

real and personal property of Respondent for the amount ordered will be held before the Special Magistrate on **April 16, 2020**, at 10:30 a.m. at Town Hall, 2525 Estero Blvd., Fort Myers Beach, FL, and could result in a foreclosure action.

8. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 30th day of January, 2020, and executed this 6 day of FEBRUARY, 2020.


Myrnabelle Roche, Special Magistrate

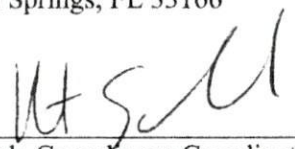
APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

Pursuant to Chapter 162.09 (3), Florida Statutes, A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon and other real or personal property owned by the violator.

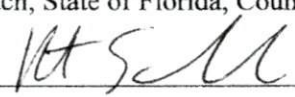
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 11 day of February, 2020 to:

Dania Carballo Ortiz and Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: 

2/11/2020

Page 3 of 3

EXHIBIT D

PARCEL #: 20-046-24-W4-01700.0050

This Document Prepared By and Return To:

Town of Fort Myers Beach Code Enforcement Department

2525 Estero Blvd.

Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0700

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on September 17, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.
2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

3. The NOV specified that Respondent was required to correct the violation by a time certain, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and on January 30, 2020, a hearing took place at which competent substantial evidence was entered into the record. Accordingly, the Town of Fort Myers Beach Special Magistrate ("Special Magistrate") entered an Order of Enforcement finding the Respondent in violation of Section 6-111, Adopting FBC 105.1 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, not paid the accrued fine in the amount of \$56,000.00, which began to accrue on March 1, 2020, and continues to accrue in the amount of \$250.00 per day, nor paid the administrative fee/cost of prosecution in the amount of \$75.00.
6. Due to noncompliance with the Order of Enforcement, a Notice of Hearing was served on the Respondent stating a hearing to impose lien would take place on September 17, 2020.

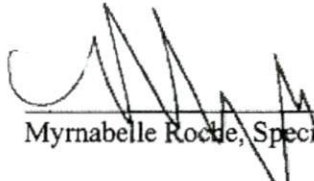
B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$56,075.00, has accrued as of the date of this hearing and continues to accrue in the amount of \$250.00 per day for every day that Respondent is in non-compliance with the Order of Enforcement previously entered in this case.
2. This Order may be recorded in the public records of Lee County, Florida or in any other county in the State of Florida where Respondent owns property and if so recorded shall constitute a lien against the Property and any other real or personal property that Respondent owns in Lee County or other county in the State of Florida.
3. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 17th day of September, 2020, and executed this 30 day of SEP, 2020.


Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

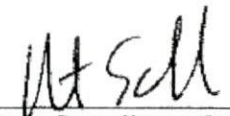
PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 10 day of October, 2020 to:

Dania Carballo Ortiz + Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

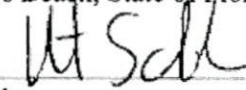
BY: 
Dated _____

EXHIBIT E



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

8/15/2018

ORTIZ DANIA CARBALLO + GARCIA
581 DE LEON DR
MIAMI SPRINGS, FL 33166

CASE NUMBER:	CE18-0724
CERTIFIED MAIL:	7018 0680 0000 1523 2746

SITE ADDRESS: 268/270 NATURE VIEW CT
PARCEL STRAP NO: 204624W4017000050

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **8/13/2018** by Town of Fort Myers Beach Code Enforcement Officer **MOLLY JACOBS** indicates that the following items are a violation:

Work w/out Permit - Roof

These items are a violation of the following Town Codes:

LDC Sec 6-111 The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law.

FBC 105.1 Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

You are hereby directed to abate or remedy these violations within 30 days of receipt of this notice.

***The violation(s) can be abated or corrected by taking the following actions:
Secure required permit and associated inspections.***



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

ONCE YOU HAVE ABATED OR CORRECTED THE VIOLATIONS, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED BY A CODE OFFICER TO VERIFY THAT THE VIOLATION(S) HAVE BEEN ABATED OR CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) abated and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 476-2467 for Molly Jacobs or (239) 218-4830 for Joe Kontomanolis if you have any questions concerning this Notice of Violation.

Respectfully,

MOLLY JACOBS

Code Enforcement Officer
Town of Fort Myers Beach

Received By: _____ Date: _____

EXHIBIT F

PARCEL #: 20-46-24-W4-01700.0050

This Document Prepared By and Return To:

Town of Fort Myers Beach Code Enforcement Department

2525 Estero Blvd.

Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0724

ORTIZ, DANIA CARBALLO + GARCIA, DAISY T/C,

Respondent.

CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on January 30, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz, present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 3

3. The NOV specified that Respondent was required to correct the violation by a specified amount of time, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and therefore, this case is properly before the Special Magistrate.
5. The following condition exists on the Property:

WORK WITHOUT PERMIT- ROOF

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 6-111, Adopting FBC 105.1.
2. Based upon the competent substantial evidence presented at the hearing, the Special Magistrate of the Town of Fort Myers Beach has determined that this Order of Enforcement is hereby warranted.

C. ORDER/IMPOSITION OF FINE:

1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$75.00 in administrative costs and fees.
3. Property shall not be occupied and Respondent is ordered to immediately cease rentals due to possible life safety hazards.
4. Respondent is ordered to correct the violation by:

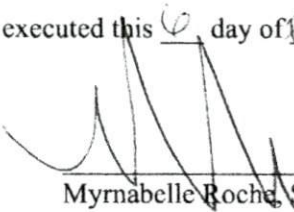
OBTAINING A PERMIT FOR ROOF

5. If the violation has been corrected, the amount ordered by the Special Magistrate for administrative costs and fees in the amount of \$75.00 is still ordered.
6. In the event that the said violation is not corrected **WITHIN 30 DAYS** a fine of **\$250.00 per day** shall be imposed against Respondent and the Property, beginning on that date and continuing for each day that the aforesaid violation continues to exist.
7. In the event that the violation is not corrected by the above mentioned date and/or the costs ordered herein have not been paid, a hearing to impose a lien against all

real and personal property of Respondent for the amount ordered will be held before the Special Magistrate on **April 16, 2020**, at 10:30 a.m. at Town Hall, 2525 Estero Blvd., Fort Myers Beach, FL, and could result in a foreclosure action.

8. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 30th day of January, 2020, and executed this 30 day of January ²⁰²⁰ 2019.


Myrabelle Roche, Special Magistrate

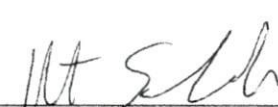
APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

Pursuant to Chapter 162.09 (3), Florida Statutes, A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon and other real or personal property owned by the violator.

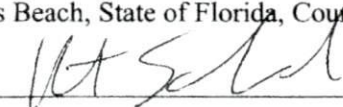
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 11 day of February, 2020 to:

Dania Carballo Ortiz and Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: 
2/11/2020

Page 3 of 3

EXHIBIT G

PARCEL #: 20-046-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE18-0724

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on September 17, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

3. The NOV specified that Respondent was required to correct the violation by a time certain, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and on January 30, 2020, a hearing took place at which competent substantial evidence was entered into the record. Accordingly, the Town of Fort Myers Beach Special Magistrate ("Special Magistrate") entered an Order of Enforcement finding the Respondent in violation of Section 6-111, Adopting FBC 105.1 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, not paid the accrued fine in the amount of \$56,000.00, which began to accrue on March 1, 2020, and continues to accrue in the amount of \$250.00 per day, nor paid the administrative fee/cost of prosecution in the amount of \$75.00.
6. Due to noncompliance with the Order of Enforcement, a Notice of Hearing was served on the Respondent stating a hearing to impose lien would take place on September 17, 2020.

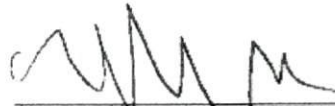
B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$56,075.00, has accrued as of the date of this hearing and continues to accrue in the amount of \$250.00 per day for every day that Respondent is in non-compliance with the Order of Enforcement previously entered in this case.
2. This Order may be recorded in the public records of Lee County, Florida or in any other county in the State of Florida where Respondent owns property and if so recorded shall constitute a lien against the Property and any other real or personal property that Respondent owns in Lee County or other county in the State of Florida.
3. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 17th day of September, 2020 and executed this 20 day of Sept, 2020.



Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 10 day of October, 2020 to:

Dania Carballo Ortiz + Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166



Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

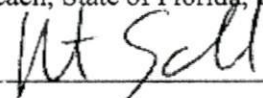
BY:  _____
Dated _____

EXHIBIT H



Town of Fort Myers Beach

NOTICE OF VIOLATION AND NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

August 26, 2020

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

ORTIZ DANIA CARBALLO + GARCIA
581 DE LEON DR
MIAMI SPRINGS, FL 33166,

Respondent.

Case Number:	CE20-0597
Certified Mail:	7019 1120 0000 0849 8936
Regular Mail:	8/26/2020

Site Address: 268/270 NATURE VIEW CT
Parcel Strap No.: 204624W4017000050

NOTICE OF REPEAT VIOLATION AND NOTICE OF CODE ENFORCEMENT HEARING

YOU ARE HEREBY NOTIFIED that, on **2/19/2020**, *Repeat- Rentals for Less Than One (1) Week* was identified as a violation of the Town's Codes.

LDC Sec. 34-2391 Weekly Rental Restrictions in certain zoning districts. Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the "Restricted" sub-group of the "Lodging" use group in Table 34-1).

(2) Dwelling units on property that qualifies for any of these exceptions may be rented to a single-family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Due to this being a repeat violation, you are hereby directed to bring these violations into compliance immediately.

The violation(s) can be brought into compliance by discontinuing renting for less than one week.

This matter will therefore be heard before the Town's Code Enforcement Special Magistrate on:



Town of Fort Myers Beach

NOTICE OF VIOLATION AND NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

9/17/2020 at 11:00 A.M. in the Council Chambers at Town Hall, located at 2525 Estero Boulevard, Fort Myers Beach, Florida.

NO ADDITIONAL NOTICE OF THE HEARING WILL BE PROVIDED TO YOU. If you fail to attend this hearing, the Code Enforcement Special Magistrate will consider the case, even though you are not present, and may assess fines or take other actions that will affect your rights. This is the only Notice of this hearing that you will receive. Please govern yourself accordingly.

Please be aware that under Florida Statutes chapter 162 and Town of Fort Myers Beach Land Development Code Section 2-427(b) a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues or is repeated. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation(s) has been corrected or abated prior to the hearing.

*Kristin
Schumacher*
Code Enforcement Officer
Town of Fort Myers Beach

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202 EXT 1400, WITHIN 2 WORKING DAYS PRIOR TO THE MEETING DATE.

EXHIBIT I

PARCEL #: 20-46-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE20-0597

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

AMENDED CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on September 17, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz and Daisy Garcia, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds, and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV")/Notice of Hearing ("NOH") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 4

3. The NOV/NOH stated that Respondent was required to correct the violation by a specified amount of time, but Respondent failed to do so.
4. The NOV/NOH further stated if compliance was not obtained by the specified amount of time, Respondent was required to appear before the Special Magistrate.
5. The following violation exists on the Property:

REPEAT- RENTALS FOR LESS THAN (1) ONE WEEK

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 34-2391. Weekly Rental Restrictions.
2. Based upon the competent substantial evidence presented at the hearing, the Special Magistrate of the Town of Fort Myers Beach has determined that this Order of Enforcement is hereby warranted.

C. ORDER/IMPOSITION OF FINE:

1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$75.00 in administrative costs and fees.
3. Respondent is fined \$500.00 for each of the 12 repeat violations for a total of \$6,000.00.
4. Respondent is ordered to correct the violation by:

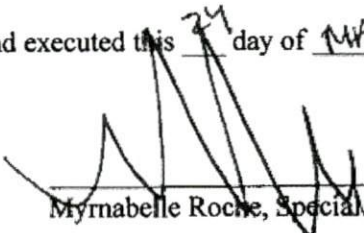
DISCONTINUE RENTALS IMMEDIATELY UNTIL PERMITTING ISSUES ARE RESOLVED. ONCE RESOLVED, ADHERE TO RC ZONING REGULATIONS BY RENTING TO A SINGLE-FAMILY FOR A MINIMUM STAY OF ONE WEEK.

5. In the event that the said violation is not corrected **IMMEDIATELY** a fine of **\$500.00 occurrence** shall be imposed against Respondent and the Property, beginning on that date and continuing for each day that the aforesaid violation continues to exist.
6. In the event that the violation is not corrected by the above-mentioned date and/or the costs ordered herein have not been paid, a hearing to impose a lien against all real and personal property of Respondent for the amount ordered will be held before

the Special Magistrate on **May 20, 2021**, at 11:00 a.m. at Town Hall, 2525 Estero Blvd., Fort Myers Beach, FL, and could result in litigation in Circuit Court.

7. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 17th day of September, 2020, and executed this 24 day of MARCH, 2021.


Myrabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

Pursuant to Chapter 162.09 (3), Florida Statutes, A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon and other real or personal property owned by the violator.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 26 day of March, 2021 to:

Dania Carballo Ortiz & Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY:

Date

1/4 S. H.
3/26/2021

EXHIBIT J

PARCEL #: 20-46-24-W4-01700.0050
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE20-0597

ORTIZ, DANIA CARBALLO + GARCIA, DAISY,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on May 20, 2021, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dania Carballo Ortiz and Daisy Garcia, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds, and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dania Carballo Ortiz and Daisy Garcia ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 268/270 Nature View Ct., Fort Myers Beach, FL 33931 ("Property"), legally described as:

Lot 5, BORTON'S SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 30, at Pages 102 and 103, of the Public Records of the Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

Page 1 of 3

3. The NOV specified that Respondent was required to correct the violation by a time certain, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and on September 17, 2020, a hearing took place at which competent substantial evidence was entered into the record. Accordingly, the Town of Fort Myers Beach Special Magistrate ("Special Magistrate") entered an Order of Enforcement finding the Respondent in violation of Section 34-2391 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, has incurred a fine of \$500.00 for each occurrence of the 24 violations, for a total of \$12,000.00, nor paid the administrative fee/cost of prosecution in the amount of \$75.00.
6. Due to noncompliance with the Order of Enforcement, a Notice of Hearing was served on the Respondent stating a hearing to impose lien would take place on March 18, 2021.

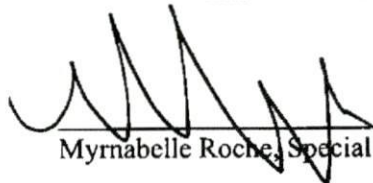
B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$12,075.00, has accrued as of the date of this hearing due to non-compliance with the Order of Enforcement previously entered in this case.
2. This Order may be recorded in the public records of Lee County, Florida or in any other county in the State of Florida where Respondent owns property and if so, recorded shall constitute a lien against the Property and any other real or personal property that Respondent owns in Lee County or other county in the State of Florida.
3. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 20th day of May, 2021, and executed this 26 day of May, 2021.


Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

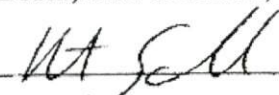
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 1 day of June, 2021 to:

Dania Carballo Ortiz & Daisy Garcia
581 De Leon Dr.
Miami Springs, FL 33166


Code Compliance Coordinator

I certify this document to be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: 

Dated

6/1/2021



Dania Carballo Ortiz + Daisy Garcia
268/270 Nature View Ct
Fort Myers Beach, FL 33931

RE: Request for Code Enforcement Lien Reduction – CE 18-0700

Dear Ms. Ortiz & Ms. Garcia:

This letter is a sufficiency determination regarding your request for a lien reduction in accordance with Section 2-432 of the Town of Fort Myers Beach Code of Ordinances. Based on the Town's records, the amount of the lien is \$365,575.00 as of March 1, 2024. The property was in non-compliance from February 29, 2020, to March 1, 2024 (1,462 days) at \$250 per day, plus a \$75.00 administrative fee and remains in noncompliance.

Section 2-432(a)(2) of the Town of Fort Myers Beach Code of Ordinances provides if a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the property, the violator/property owner may apply for a reduction of the lien by providing a written application to the town manager. I am in receipt of your application filed on October 17, 2023, a copy of which is attached as Exhibit A.

The Code requires the application to include specific information, which has been reviewed for sufficiency by Town Staff. Staff comments are underlined below:

a. A copy of the order imposing a lien upon the property: A copy of the lien recorded on October 7, 2020 as Instrument 202000024 is included in Exhibit A. The lien is based on an order by the Special Magistrate, a violation for unpermitted work completed on the entire house including exterior work after the fire located at 268/270 Nature View Court, Fort Myers Beach, Florida, which was not remedied by the compliance date of February 29, 2020.

b. The code enforcement case number: CE 18-0700.

c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town Code: Based on information in CE 18-0700, the code violation remains in noncompliance as a permit for work done on the upper level including exterior work has not been obtained. A permit was obtained for work on the lower floor on November 11, 2023, which was completed in January 2024, and is now in compliance.

d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted: You are claiming financial hardship based on illness, loss due to Hurricane Ian and a pending mortgage default:

e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted: The owner requests forgiveness of 100% of the lien.



f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded: Illness, no manpower, financial constraints.

g. The amount of the reduction in penalty or fine requested by the violator/property owner: The owner requests forgiveness of 100% of the lien.

h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default: The property owner claims there is an existing mortgage with Regions Bank in the amount of \$305,000, executed on August 8, 2013, which is currently in default for \$46,000.

i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal: Additional documents in support of the applicant's request are included in Exhibit A; and

j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager or designee: The application was properly submitted.

Section 2-432(3) requires payment of a \$200 administrative fee, which was paid.

Section 2-432(4) requires confirmation of compliance prior to presentation of a request for a lien reduction to the Town Council. As stated above, the property remains in noncompliance due to the lack of permitting for construction on the upper level of the house.

Based on my review, this letter is my written denial of your lien reduction request since the violation which resulted in the order imposing the penalty or fine has not been brought into full compliance as required by Section 2-432(4). Because this property is still not in compliance, the fine continues to accrue at \$250 per day. You may appeal my decision to the Town Council as provided in Section 34-86 of the Town of Fort Myers Beach Code of Ordinances. The Town Council may reverse, affirm, or modify my denial.

Sincerely,

Andrew Hyatt, Town Manager

Instrument Prepared by and Return to:
Fort Myers Beach Code Enforcement
2731 Oak Street
Fort Myers Beach, Florida 33931

**TOWN OF FORT MYERS BEACH, FLORIDA
CODE ENFORCEMENT**

AFFIDAVIT OF NON COMPLIANCE

**STATE OF FLORIDA)
COUNTY OF LEE)**

BEFORE ME, the undersigned authority, personally appeared Kristin Schumacher, a designee for the Town of Fort Myers Beach, FL, and served as a "Code Inspector" as defined by section 162.04, Florida Statutes to assure compliance with the Town of Fort Myers Beach, deposes and says:

1. On the 18th day of August, 2018, Dania Carballo Ortiz and Daisy Garcia (property owner) was found in violation of the Town of Fort Myers Beach Ordinance No. 105.1, (Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.) at the property located at 268/270 Nature View Ct, Fort Myers Beach, FL 33931 ("Subject Property") by virtue of a Code Enforcement Order by the Special Magistrate adjudicated on Case No. CE18-0700 on the 17th day of September, 2020.

2. The Order was recorded as Instrument No. 202000042776 on the 18th day of February, 2020 in the public records of Lee County, Florida.

3. Dania Carballo Ortiz and Daisy Garcia was given 30 days to come into compliance with the Special Magistrate's Order, which was on or before the 29th day of February, 2024.

4. I performed an inspection of the Subject Property on the 13th day of March, 2024, and the Subject Property remained not in compliance with the Special Magistrate's Order as there does not appear to be any progress made to 268/270 Nature View Ct, Fort Myers Beach, FL 33931 (Subject Property).

5. I have attached Exhibit A, which is a Copy of the Permit for the Subject Property which does not address the second floor, which I personally observed and fairly represents the condition of the Subject Property I personally observed on the 13st day of March, 2024.

6. I have personal knowledge of all these facts and each is true to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Signed on this ^{13th} 31st day of March, 2024.


Print Name: Kristin Schumacher
Code Inspector (Designee)

STATE OF FLORIDA
COUNTY OF LEE

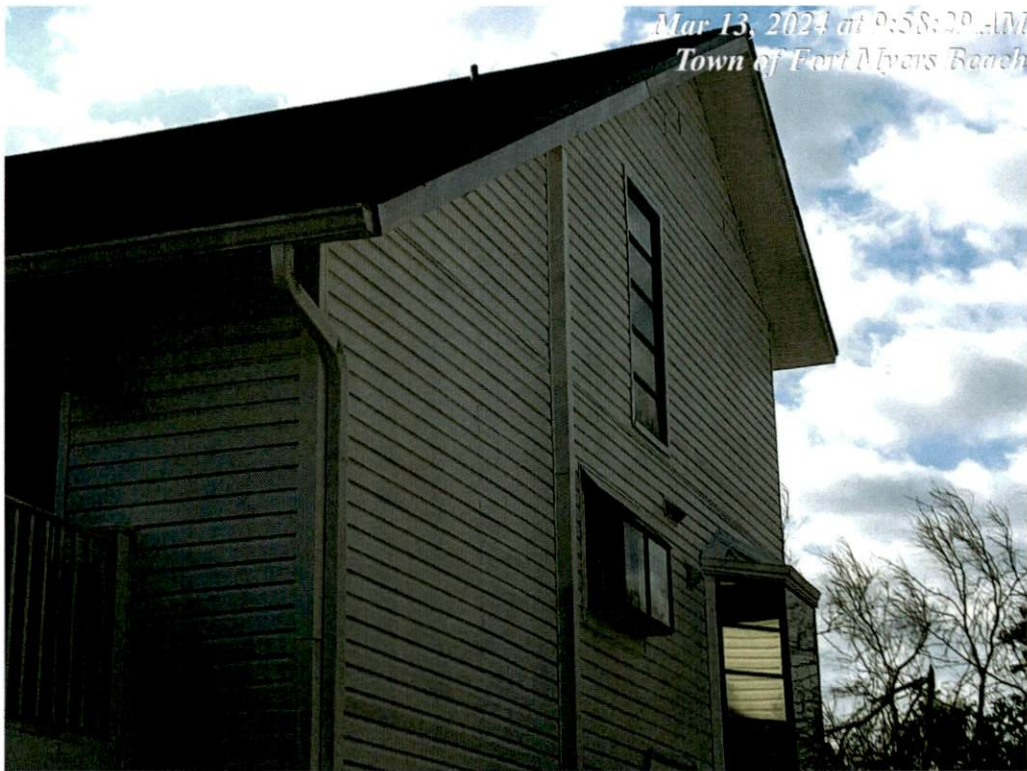
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 13 day of March, 2024 by Kristin Schumacher, as Designee, who is personally known to me or has produced _____ as identification.



Amy Baker
Signature of Notary

Amy Baker
(Name typed, printed or stamped)

My Commission expires: _____





Reviewed for Compliance

Permit 235112

*Town of Fort Myers Beach
Building Department*

2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

Approval Letter

BUILD RESPONSIBLY!

GO TO:

<https://www.fortmyersbeachfl.gov/DocumentCenter/View/16329/BUILD-RESPONSIBLY>

Date: 8/22/23

Permit #: 235112

Address: 268/270 NATURE VIEW CT FORT MYERS BEACH, 33931

Applicant: SPF Contracting Group llc

Scope of Work: hurricane remodel

Review Type	Reviewer	Review Status
Zoning Review		Not Required
Flood Review	ROY BRONOLD	Reviewed for Compliance
Plan Review	ROY BRONOLD	Reviewed for Compliance
Stormwater Review		Not Required
Environmental Review		Not Required
Public Works Review		Not Required
Beach Water Review		Not Required

Permit Conditions:

buildingpermits@fmbgov.com

Jobsite Copy



Private Provider
Inspection BSMEP
Report #: 001A

Client: Dania Carballo
Project: 270 Nature View Court
Location: 270 Nature View Court, Fort Myers, Florida

Report Date: 12/05/2023 **Inspection Date:** 12/04/2023
Project #: 402-23251
Permit #: 235112

FIELD DATA

Location (s) / Item (s): 1st level house & A/C closet room

Referenced Details / Drawings: Contract documents

TYPE OF INSPECTION PERFORMED

Electrical	Electrical Sub	Plumbing	Mechanical	Building
☐ Underground	Permits	☐ Underground	☐ TCO	☐ Framing
☐ Deck / Slab	☐ Access Control	☐ Insulation	☒ Rough duct	☐ Insulation
☐ Rough in wall	☐ Low Voltage	☐ Pressure test	☐ Overhead Duct	☐ Fire Stopping
☐ Rough Overhead	☐ BDA	☐ Gas Rough	☐ Duct Insulation	☒ Drywall
☐ Empty Conduit	☐ Fire Alarm	☐ Fire Stopping	☐ F / S Damper Install	☐ Window/Door Buck
☐ TCO	☐ Data / Control	☐ Gravity Test	☐ Chiller Water Pipe	☐ TCO
☐ Final	☐ Intercom/CCT	☐ Gas Underground	☐ Refrigerant Lines	☒ Final
☐ Foundation / Bonding	☐ Burglar Alarm	☐ Grease Trap	☐ Duct Detector test	
	☐ Final	☐ Sanitary or Storm or Condensate	☐ Fire Stopping	
Roofing				
☐ Mop in Progress	☐ Insulation	☐ Tin Cap		
☐ Torch Down in Progress		☐ Final		

Other: 108 DRYWALL, 401 ROUGH AC AND 402 FINAL MECHANICAL APPROVED

INSPECTION RESULTS AND NON CONFORMANCE

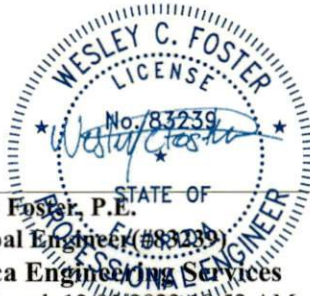
The work observed complied with the approved contract documents: ☒ Initial Inspection ☐ Re-Inspection Previous Inspection Date _____

☐ Work In Progress ☒ Final ☐ Follow-up Visit Required ☐ RFI (Request For Information)

☒ Approved/Conforming ☐ Disapproved/Non-Conforming

Remarks: Pacifica representative was on site for perform a final inspection in accordance with the contract documents approved provided

Report Copied to: Dania Carballo


Wesley Foster, P.E.
Principal Engineer (#83239)
Pacifica Engineering Services
Date Signed: 12/05/2023 10:52 AM

Notes: As requested, a representative from our company arrived on site as scheduled and performed the above test. These test results apply only to the specific locations noted and do not represent any other location. Reports may not be reproduced except in full, without permission.