



Fort Myers Beach Special Magistrate Hearing

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

Agenda

Thursday, September 5, 2024

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

II. APPROVAL OF MINUTES

A. Special Magistrate Hearings - August 6, 2024

III. SWEARING IN OF THOSE PROVIDING TESTIMONY

IV. CONTINUED CASES

A. 144 Gulf Island Dr., Andrews, David + Mardina

Case Number: 20220371

Violation: Work without Permit - Stairs

**Code Section: LDC Sec. 6-111 - Adoption; amendments
105.1 - Permits required**

Code Officer: D. Batt

B. 1661 Estero Blvd., Key Estero Shops, LLC

Case Number: 20240249

**Violation: Operation of a shared parking lot to the public for a fee
per vehicle space without first obtaining the required
Use Permit.**

Code Section: LDC Sec. 34-3203 - Illegal buildings, uses and lots.

Code Officer: D. Batt

C. 5740 Lauder St., McCarthy, Wendy L. + Unknown Heirs of McCarthy, Janet

Case Number: 20240316

**Violation: Failure to maintain a property in safe condition or
demolition**

**Code Section: LDC Sec. 6-111 - Adoption; amendments
103.5 Unsafe buildings or systems**

Code Officer: D. Batt

**Case closed. Matter transferred to Building Official's for further
consideration under the Unsafe Building Code.**

NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE SPECIAL MAGISTRATE IN ANY MATTER CONSIDERED AT THIS 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.

MINUTES
FORT MYERS BEACH
Special Magistrate Hearings
Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Tuesday, August 6, 2024

Special Magistrate Monica Schmucker presiding.

I. CALL TO ORDER

Special Magistrate Schumucker called the meeting to order.

II. APPROVAL OF MINUTES February 2, 2024

Special Magistrate Schumucker approved the minutes of February 2, 2024.

III. NEW CASES TO BE HEARD

Special Magistrate Schmucker swore in the individuals who were present and intended to provide testimony in the noticed cases.

144 Gulf Island Dr., Andrews, David & Mardina

Case Number: 20220371

Subject: Work without Permit - Stairs

Code Section: LDC Sec. 6-111 - Adoption; amendments 105.1 - Permits required

Code Officer: D. Batt

Officer Batt stated that the property owner requested a continuance to September 4, 2024, because they were out of the country. The Town agreed with the property owner's request. Special Magistrate Schmucker granted the continuance.

5740 Lauder St., McCarthy, Wendy L. + Unknown Heirs of McCarthy, Janet

Case Number: 20240316

Subject: Maintaining of a property in need of repair and/or demolition

Code Section: LDC Sec. 6-111 - Adoption; amendments 103.5 Unsafe buildings or systems

Code Officer: D. Batt

Officer Batt indicated that the property owner requested a continuance to September 4, 2024 and the Town agreed with the request. The Town stated that the case would be reviewed to determine if it was appropriate to transfer the case to the Building Official for a determination if the building

should be demolished. Copies of emails were submitted for the record. Special Magistrate Schmucker granted the continuance.

1661 Estero Blvd., Key Estero Shops, LLC

Case Number: 20240249

Subject: Operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit.

Code Section: LDC Sec. 34-3203 - Illegal buildings, uses and lots.

Officer Batt presented the case on behalf of the Town. She requested that all documents that were in the agenda materials be submitted into evidence in the case. The Special Magistrate so ordered. Officer Batt testified that on March 18, 2024, she observed the operation of a shared parking lot on property owned by Key Estero Shops by charging a fee per vehicle without obtaining the required use permit on the property. Officer Batt took photos of the violation. Copies of her photos are included in Exhibit B. Officer Batt described her observation of the violation as reflected in the photos

A notice of violation was sent to the property owner and registered agent by certified mail and posted at the property on March 21, 2024. Copies of the notices were included in Exhibit C. Key Estero Stops, LLC was given 30 days to comply on or before April 27, 2024.

Officer Batt inspected the property three times (inaudible) since she issued the Notice of Violation. She testified that this is a repeat violation of a violation in 2019. The fine in the 2019 case was became a lien on September 2, 2020 (See Exhibit F) and thereafter went into foreclosure. She described the exhibit's contents, which included a notice of violation from July 20, 2024. (The audio is not working.) The foreclosure case resulted in a settlement of approximately \$188,000 dollars.

Based on the evidence presented, the Town requested that an order be issued finding a repeat violation and the imposition of a fine of \$250 for administrative costs a fine not to exceed \$500.00 per day until the property owner came into compliance. As of the day of the hearing, 141 days have lapsed for a total fine of \$70,500.00. To become in compliant, the property owner had to cease activity or obtain the appropriate permit to allow operation of a shared parking lot. Jason Smalley, a senior planner with the Town, testified later in the hearing that the appropriate permit was a special exception, which would require review by the Local Planning Agency and the Town Council. He described the permit process and noted it usually took 60-90 days to complete.

Attorney Amy Thibaut from Roetzel & Andress represented the property owner. She reviewed the history of the property with a PowerPoint presentation and made several arguments. She claimed: the property was used for paid parking since 1980 and that this use was permitted by right as a legal nonconforming use. Any delay in prosecution of the matter was not the fault of the property owner. She questioned whether a special exception

requirement could apply retroactively and argued that Florida law requires interpretation of zoning ordinances in favor of property owners. She argued that her client's use was permitted by Florida law related to nonconforming uses and asserted equitable estoppel, laches, and the violation of Section 715.075 as defenses to the alleged violation.

Town Attorney Stuparich stated that the town was unaware that the property owner was asserting a right to a legal nonconforming use in this case and it was inappropriate to assert it now without previously communicating with staff. Attorney Thibaut noted that the nonconforming use defense was raised in the 2019 case; however, on appeal that case was dismissed on procedural grounds so there was no adjudication of the merits of the claim. Town Attorney Stuparich requested time to review the legal issues that were raised by Attorney Thibaut. Attorney Thibaut asked the town to consider this a lawful nonconforming use that has continued.

Special Magistrate Schmucker stated that if the property owner continued to be in violation, fines would accrue from the March violation date. The fact that an application was submitted did not prevent the fines from accruing. Town Attorney Stuparich suggested that Attorney Thibaut submit a brief that the Town could address her specific defenses. Special Magistrate Schmucker agreed. Special Magistrate Schmucker stated she would give Attorney Thibaut 10 days to submit a brief and continue the hearing to the September meeting.

IV. ADMINISTRATIVE AGENDA

Case CE20-0239, 215 Flamingo St., Oceanic Blue Retreats, LLC

Public Notice for Order of Compliance Issued

Town Attorney Stuparich spoke but was inaudible.

Signature: _____

- End of document

Property Address and Owner:

Hearing Date: September 5, 2024

Case Number: 20220371
Violation: Work without Permit - Stairs
Code Section: LDC Sec. 6-111 - Adoption; amendments
105.1 - Permits required
Code Officer: D. Batt

Subject:

Work without Permit - Stairs

Code Section:

LDC Sec. 6-111 - Adoption; amendments, FBC 105.1 - Permits required

Reference Number:

20220371

Strap Number:

29-46-24-W2-0050D.0070

Officer:

D. Batt

Narrative:

Case Number: 20220371
Violation: Work without Permit - Stairs
Code Section: LDC Sec. 6-111 - Adoption; amendments
105.1 - Permits required
Code Officer: D. Batt

Attachments:

1. Exhibit A- Establishment of Ownership
2. Exhibit B- Photos of Initial Site Inspection
3. Exhibit C- Notice of Violation and Service
4. Exhibit D- Affidavit of Non-Compliance
5. Exhibit E- Referenced Town of Fort Myers Beach Code of Ordinances
6. Exhibit F- Notice of Hearing and Service
7. Exhibit G- Order to Continue
8. Exhibit H- Affidavit of Compliance
9. Exhibit I- Notice of Hearing

Town Recommendations:

The Town requests that an order be issued affording the appropriate relief, including an order to correct the above listed violation(s) and/or the imposition of an administrative fee of \$250.00 to cover costs in bringing this matter before the Special Magistrate, a fine not to exceed \$250.00 for each day each violation continues past the date for compliance or \$500.00 for each day each violation was repeated, and for such other and further relief as is consistent with the powers of the Special Magistrate.

Town Approvals:

Date: August 27, 2024

Thomas Yozzo, Operations & Compliance Manager

Date: August 29, 2024

nancy stuparich, Town Attorney

EXHIBIT A



Property Data

STRAP: 29-46-24-W2-0050D.0070 Folio ID: 10229730

[Hurricane Ian Tax Roll Value Letter](#) [Tax Refund Status](#)

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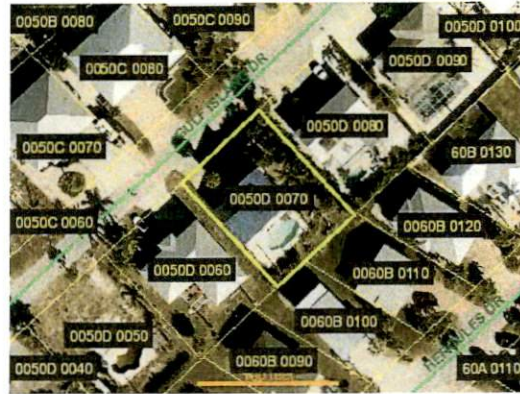
Owner Of Record - Tenants by Entirety

[\[Change Mailing Address\]](#)

ANDREWS DAVID & MARDINA
525 DALE BLVD
WINNIPEG MB R3R 2J8
CANADA



[\[Tax Map Viewer\]](#) [\[View Comparables\]](#)



[\[Pictometry Aerial Viewer\]](#)

Site Address

Site Address maintained by [E911 Program Addressing](#)

144 GULF ISLAND DR
FORT MYERS BEACH FL 33931

Property Description

Do not use for legal documents!

PARL IN GULF ISLAND MANOR BLK D REC IN PB 8 PG 68 DESC
IN OR 434 PG 233

[View Recorded Plat at LeeClerk.org](#) - Use this link to do an Official Records search on the Lee County Clerk of Courts website, using 8 and 68 for the book and page numbers.

Attributes and Location Details

Total Bedrooms / Bathrooms	3 / 3.0
Gross Living Area	1,792
1st Year Building on Tax Roll	1995
Historic Designation	No

Township	Range	Section	Block	Lot
46	24E	29	0050D	0070
Municipality	Latitude	Longitude		
Town of Fort Myers Beach	26.44073	-81.9246		

[View Parcel on Google Maps](#)

Image of Structure



◀ Photo Date March of 2012 ▶ ☐ View other photos

Last Inspection Date: 07/01/2022

Property Values / Exemptions / TRIM Notices

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No existing exemptions found for this property.

TRIM Notices	Tax Year	Just	Land	Market Assessed	Capped Assessed	Exemptions	Classified Use	Taxable
	Current	677,249	620,569	677,249	677,249	0	0	677,249
2023 Values / Additional Info	2023	732,649	379,298	732,649	643,804	0	0	643,804
2022 Values / Additional Info	2022	817,540	231,300	817,540	585,276	0	0	585,276
2021 Values / Additional Info	2021	560,895	167,600	560,895	532,069	0	0	532,069
2020 Values / Additional Info	2020	483,699	168,600	483,699	483,699	0	0	483,699
2019 Values / Additional Info	2019	471,599	162,100	471,599	471,599	0	0	471,599
2018 Values / Additional Info	2018	464,295	162,100	464,295	464,295	0	0	464,295
2017 Values / Additional Info	2017	461,884	154,400	461,884	434,708	0	0	434,708
2016 Values	2016	454,014	154,400	454,014	395,189	0	0	395,189
2015 Values	2015	383,198	154,400	383,198	359,263	0	0	359,263
2014 Values	2014	341,414	100,320	341,414	326,603	0	0	326,603
2013 Values	2013	296,912	146,900	296,912	296,912	0	0	296,912
2012 Values	2012	302,524	120,000	302,524	302,524	0	0	302,524
2011 Values	2011	301,258	120,000	301,258	301,258	0	0	301,258

<u>2010 Values</u>	2010	319,995	140,000	319,995	319,995	0	0	319,995
	2009	364,810	155,000	364,810	364,810	0	0	364,810
	2008	432,430	220,000	432,430	432,430	0	0	432,430
	2007	461,480	250,000	0	461,480	0	0	461,480
	2006	527,230	230,000	0	527,230	0	0	527,230
	2005	407,930	165,000	0	407,930	0	0	407,930
	2004	325,830	155,000	0	325,830	0	0	325,830
	2003	343,720	105,000	0	343,720	0	0	343,720
	2002	222,230	45,000	0	222,230	0	0	222,230
	2001	192,320	45,000	0	192,320	0	0	192,320
	2000	190,590	45,000	0	190,590	0	0	190,590
	1999	184,640	45,000	0	184,640	0	0	184,640
	1998	162,290	42,500	0	162,290	0	0	162,290
	1997	163,010	42,500	0	163,010	0	0	163,010
	1996	156,760	42,500	0	156,760	0	0	156,760
	1995	40,430	40,430	0	40,430	0	0	40,430
	1994	34,910	34,910	0	34,910	0	0	34,910
	1993	33,080	33,080	0	33,080	0	0	33,080
	1992	29,400	29,400	0	29,400	0	0	29,400

The **Just** value is the total parcel assessment (less any considerations for the cost of sale). This is the closest value to *Fair Market Value* we produce and is dated as of January 1st of the tax year in question ([F.A.C. 12D-1.002](#)).

The **Land** value is the portion of the total parcel assessment attributed to the land.

The **Market Assessed** value is the total parcel assessment (less any considerations for the cost of sale) based upon the assessment standard. Most parcels are assessed based either upon the *Highest and Best Use* standard or the *Present Use* standard ([F.S. 193.011](#)). For *Agriculturally Classified* parcels (or parts thereof), only agricultural uses are considered in the assessment ([F.S. 193.461 \(6\) \(a\)](#)). The difference between the *Highest and Best Use/Present Use* and the *Agricultural Use* is often referred to as the *Agricultural Exemption*.
(i.e. Market Assessed = Just - Agricultural Exemption)

The **Capped Assessed** value is the *Market Assessment* after any *Save Our Homes* or *10% Assessment Limitation* cap is applied. This assessment cap is applied to all properties and limits year-to-year assessment increases to either the *Consumer Price Index* or 3%, whichever is lower for Homestead properties OR 10% for non-Homestead properties.

The **Exemptions** value is the total amount of all exemptions on the parcel.

The **Taxable** value is the *Capped Assessment* after exemptions (*Homestead, etc.*) are applied to it. This is the value that most taxing authorities use to calculate a parcel's taxes.
(i.e. Taxable = Capped Assessed - Exemptions)

Property Details (Current Working Values)

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Land

Land Tracts

Use Code	Use Code Description	Number of Units	Unit of Measure
100	Single Family Residential	1.00	Lot

Buildings

Building 1 of 1

Building Characteristics

Improvement Type	Model Type	Stories	Living Units
106 - Contemporary	1 - SINGLE FAMILY RESIDENTIAL	2.0	1
Bedrooms	Bathrooms	Year Built	Effective Year Built
3	3.0	1995	1996

Building Subareas

Description	Heated / Under Air	Area (Sq Ft)
BAS - BASE	Y	840
CFL - CATHEDRAL FLOOR AREA	Y	224
CFL - CATHEDRAL FLOOR AREA	Y	214
FOP - FINISHED OPEN PORCH	N	162
FUS - FINISHED UPPER STORY	Y	514
LCP - LOWER CARPORT / OPEN PORCH	N	1,426
PPT - POOL PATIO	N	924
STP - STOOP	N	316

STP - STOOP

N

132

Building Features

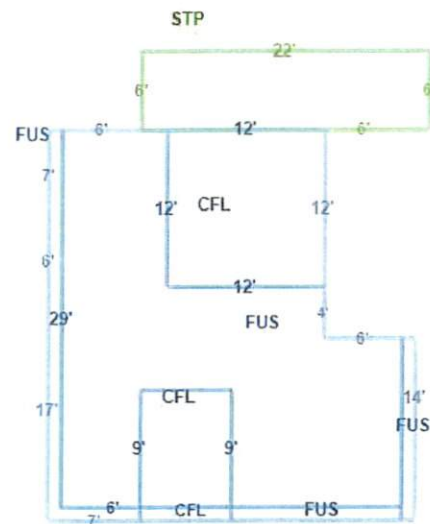
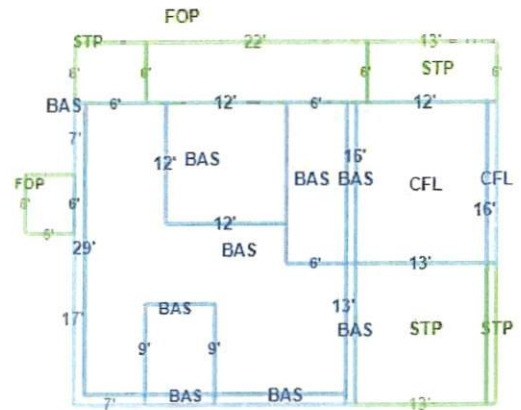
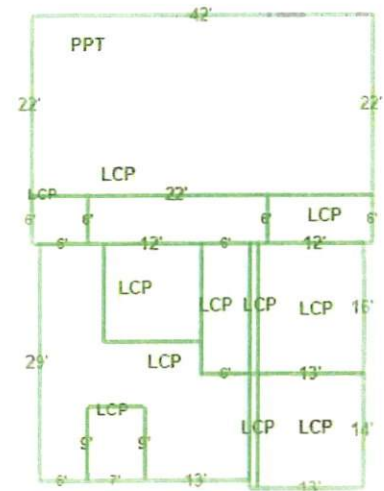
Description	Year Added	Units
POOL - RESIDENTIAL	1995	308
PATIO - CONCRETE	1995	736

Building Front Photo



Photo Date: March of 2012

Building Footprint



Property Details (2023 Tax Roll)



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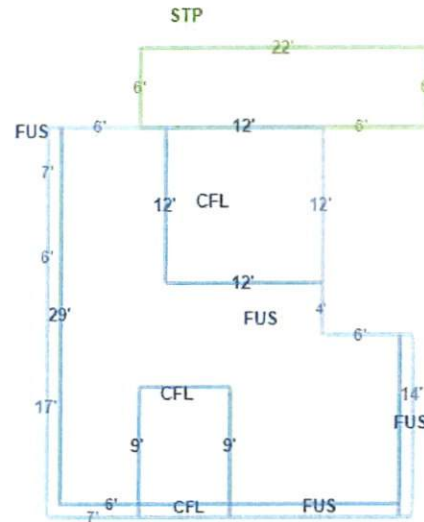
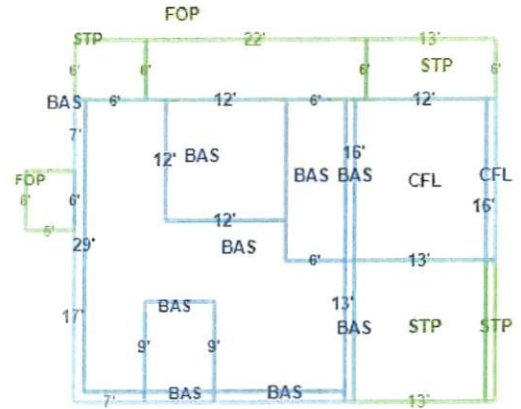
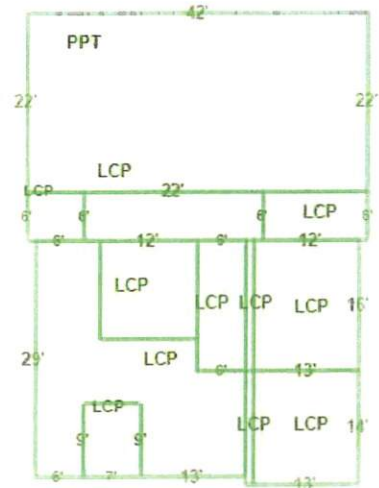
Land				
Land Tracts				
Use Code	Use Code Description	Number of Units	Unit of Measure	
100	Single Family Residential	1.00	Lot	
Buildings				
Building 1 of 1				
Building Characteristics				
Improvement Type	Model Type	Stories	Living Units	
106 - Contemporary	1 - SINGLE FAMILY RESIDENTIAL	2.0	1	
Bedrooms	Bathrooms	Year Built	Effective Year Built	
3	3.0	1995	1996	
Building Subareas				
Description		Heated / Under Air	Area (Sq Ft)	
BAS - BASE		Y	840	
CFL - CATHEDRAL FLOOR AREA		Y	224	
CFL - CATHEDRAL FLOOR AREA		Y	214	
FOP - FINISHED OPEN PORCH		N	162	
FUS - FINISHED UPPER STORY		Y	514	
LCP - LOWER CARPORT / OPEN PORCH		N	1,426	
PPT - POOL PATIO		N	924	
STP - STOOP		N	316	
STP - STOOP		N	132	
Building Features				
Description		Year Added	Units	
POOL - RESIDENTIAL		1995	308	
PATIO - CONCRETE		1995	736	

Building Front Photo



Photo Date: March of 2012

Building Footprint



Taxing Authorities

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TOWN OF FT MYERS BEACH / 032

Name / Code	Category	Mailing Address
LEE CO GENERAL REVENUE / 044	County	LEE COUNTY OFFICE OF MGMT & BUDGET PO BOX 398 FORT MYERS FL 33902-0398
FORT MYERS BEACH FIRE CONTROL DIST / 032	Independent District	FORT MYERS BEACH FIRE CONTROL DIST 100 VOORHIS ST FORT MYERS BEACH FL 33931
FORT MYERS BEACH MOSQUITO CONTROL / 035	Independent District	FORT MYERS BEACH MOSQUITO CONTROL PO BOX 2837 FORT MYERS BEACH FL 33932-2837
FORT MYERS BEACH PUBLIC LIBRARY DIST / 033	Independent District	FORT MYERS BEACH PUBLIC LIBRARY DIST 2755 ESTERO BLVD FORT MYERS BEACH FL 33931
LEE CO HYACINTH CONTROL DIST / 051	Independent District	LEE CO HYACINTH CONTROL DIST 15191 HOMESTEAD RD LEHIGH ACRES FL 33971
WEST COAST INLAND NAVIGATION DIST / 098	Independent District	WEST COAST INLAND NAVIGATION DIST 200 MIAMI AVE E VENICE FL 34285-2408
TOWN OF FORT MYERS BEACH FLORIDA / 118	Municipal	TOWN OF FORT MYERS BEACH 2523 ESTERO BLVD FORT MYERS BEACH FL 33931
PUBLIC SCHOOL - BY LOCAL BOARD / 012	Public Schools	LEE COUNTY SCHOOL BOARD BUDGET DEPARTMENT 2855 COLONIAL BLVD FORT MYERS FL 33966
PUBLIC SCHOOL - BY STATE LAW / 013	Public Schools	LEE COUNTY SCHOOL BOARD BUDGET DEPARTMENT 2855 COLONIAL BLVD FORT MYERS FL 33966
SFWMD-DISTRICT-WIDE / 110	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406
SFWMD-EVERGLADES CONSTRUCTION PROJECT / 084	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406
SFWMD-OKEECHOBEE BASIN / 308	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406

Sales / Transactions ⓘ

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Sale Price	Date	Clerk File Number	Type	Notes	Vacant/ Improved
305,300.00	01/23/2012	2012000018125	01		I
55,000.00	01/01/1995	2566/1232	06		V
100.00	12/01/1985	1822/474	01		V

[View Recorded Plat at LeeClerk.org](#)

Use the above link to do a search on the Lee County Clerk of Courts website, using **8** and **68** for the book and page numbers and **Plats Book** for the book type.

Help safeguard your home against property fraud. Sign up for the Lee Clerk's free [Property Fraud Alert](#).

Building / Construction Permit Data

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Permit Number	Permit Type	Date
241030	Building Remodel / Repair	04/23/2024
241018	AC New / Change out	04/10/2024
233454	Roof	04/27/2023
231175	Electric	03/01/2023
ROF16-0083	Roof	08/08/2016
199502326	Pool & Spa	03/09/1995
199500884	Residential	01/30/1995

IMPORTANT: THIS MAY NOT BE A COMPREHENSIVE OR TIMELY LISTING OF PERMITS ISSUED FOR THIS PROPERTY.

Note: The Lee County Property Appraiser's Office does not issue or maintain any permit information. The Building / Construction permit data displayed here represents only those records this Office may find necessary to conduct Property Appraiser business. Use of this information is with the understanding that in no way is this to be considered a comprehensive listing of permits for this or any other parcel.

The Date field represents the date the property appraiser received information regarding permit activity; it may or not represent the actual date of permit issuance or completion.

Full, accurate, active and valid permit information for parcels can only be obtained from the [appropriate permit issuing agency](#).

Parcel Numbering History

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Prior STRAP	Prior Folio ID	Renumber Reason	Renumber Date
29-46-24-05-0000D.0070	N/A	Reserved for Renumber ONLY	01/12/1995

Solid Waste (Garbage) Roll Data

Generated on 7/9/2024 1:37 PM

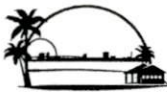
Solid Waste District	Roll Type	Category	Unit / Area	Tax Amount
001 - Service Area 1	R - Residential Category		1	302.38
		Collection Days		
		Recycling		
		Horticulture		
		Thursdays		

Flood and Storm Information

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Flood Insurance		Find my flood zone		Evacuation Zone	
Community	Panel	Version	Date		
071C	0558	G	11/17/2022	A	

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Lee County Tax Collector

Noelle Branning

2023 Paid Real Estate Tax Notice

Ad Valorem Taxes and Non-ad Valorem Assessments for Lee County, Florida

Account Number:
29-46-24-W2-0050D.0070
Alternate Key:
2100535821
Millage Code:
032

Site Address / Legal Description:
144 GULF ISLAND DR

PARL IN GULF ISLAND MANOR BLK D REC IN
PB 8 PG 68 DESC IN OR 434 PG 233

Exemptions/Values:

Assessed Value 732,649

* See message below

ANDREWS DAVID & MARDINA
525 DALE BLVD
WINNIPEG, MB R3R 2J8
CANADA

Paid 02/23/2024 INT-00-02099345 \$9,576.69

Ad Valorem Taxes Levying Authority

	Telephone	Mill Rate	Assessed	Exemption	Taxable	Amount
LEE COUNTY GENERAL REVENUE	239-533-2221	3.7623	643,804	0	643,804	2,422.18
PUBLIC SCHOOL - BY LOCAL BOARD	239-337-8215	2.2480	732,649	0	732,649	1,646.99
PUBLIC SCHOOL - BY STATE LAW	239-337-8215	3.1820	732,649	0	732,649	2,331.29
TOWN OF FORT MYERS BEACH	239-765-0202	0.9900	643,804	0	643,804	637.37
SFL WATER MGMT-DISTRICT LEVY	561-686-8800	0.0948	643,804	0	643,804	61.03
SFL WATER MGMT-EVERGLADE CONST	561-686-8800	0.0327	643,804	0	643,804	21.05
SFL WATER MGMT-OKEECHOBEE LEVY	561-686-8800	0.1026	643,804	0	643,804	66.05
FORT MYERS BEACH FIRE CONTROL DISTRICT	239-590-4200	2.9851	643,804	0	643,804	1,921.82
FORT MYERS BEACH MOSQUITO	239-463-6350	0.1123	643,804	0	643,804	72.30
FORT MYERS BEACH LIBRARY	239-463-9691	0.2355	643,804	0	643,804	151.62
LEE COUNTY HYACINTH CONTROL	239-694-2174	0.0217	643,804	0	643,804	13.97
WEST COAST INLAND NAVIGATION DISTRICT	941-485-9402	0.0394	643,804	0	643,804	25.37

Non-Ad Valorem Assessments Levying Authority

LEE COUNTY SOLID WASTE ASSESSMENT

Telephone	Rate	Amount
239-533-8000		302.38

2023 Combined Total Ad Valorem and Non-Ad Valorem:

\$9,673.42

2023 Paid Real Estate

Tax Notice

Account: 29-46-24-W2-0050D.0070
Site Address: 144 GULF ISLAND DR,
FORT MYERS BEACH,
33931
Alternate Key: 2100535821

* If the address below is not correct, visit LeePA.org to update your address.
ANDREWS DAVID & MARDINA
525 DALE BLVD
WINNIPEG, MB R3R 2J8
CANADA

Make check payable to:

LEE COUNTY TAX COLLECTOR
PO BOX 1609
FORT MYERS FL 33902-1609

PAY ONLY ONE AMOUNT

If Received By: Feb 29, 2024
Amount Due: \$0.00

Phone/Email Contact: _____

For payment options and instructions, refer to the back of this notice.

Paid 02/23/2024 INT-00-02099345 \$9,576.69



IMPORTANT INSTRUCTIONS AND INFORMATION - PLEASE READ

Ad Valorem Taxes cover the period January 1 through December 31 of the tax year indicated on the front of this notice. Tax notices are mailed on or about November 1 and become delinquent April 1. Failure to receive a tax notice does not extend discounts or excuse taxpayers' responsibilities to pay taxes and applicable penalties for late payments. Installment tax notices are mailed in June, September, December and March. Installment payment discounts are: June (6%), September (4.5%) and December (3%).

Governmental Office Responsibilities



Lee County Tax Collector

The Tax Collector prints, mails, and collects payments based on the tax rolls certified by the Property Appraiser and Levying Authorities.

Contact the Tax Collector to:

- Pay your current or delinquent property taxes
- Learn about Partial Payment, Installment Payment, and Homestead Tax Deferral plans
- Print your tax bills and receipts

Phone: 239-533-6000 • Website: LeeTC.com



Lee County Property Appraiser

The Property Appraiser values properties and prepares and certifies the tax roll which includes assessed values, exemptions, legal description, assessed owner(s) name and mailing address.

Contact the Property Appraiser to:

- Ask questions about the assessed value or exemption of your property
- Change your mailing address
- File or check on Homestead and other exemptions

Phone: 239-533-6100 • Website: LeePA.org



Lee County Levying Authorities

Lee County Levying Authorities establish millage rates and assessments based on revenue needed for operating expenses.

Call your Levying Authority with direct questions regarding services provided or rates charged.

A list of Levying Authorities and phone numbers may appear on the front of this notice or can be found on your property tax bill.

Visit LeeTC.com/property-taxes for instructions on viewing your bill.

Discounts

The amounts indicated on the front of this notice represent the total taxes and assessments due (if applicable) less discounts allowed for early payment. When the discount period ends on a weekend or holiday, the discount is extended to the next business day. Taxes are due by March 31 of each year.

4% if paid in **NOVEMBER**

3% if paid in **DECEMBER**

2% if paid in **JANUARY**

1% if paid in **FEBRUARY**

Delinquent Taxes

Payment of delinquent taxes must be made in certified U.S. funds drawn on a U.S. bank. The amount due is determined by the date payment is received. Failure to pay delinquent taxes could result in the loss of your property. On April 1 the following charges are imposed by Florida Law:

Real Estate: 3% minimum interest and advertising costs. A tax certificate sale is held on or before June 1 resulting in additional charges.

Tangible Personal Property: 18% interest annually, cost of advertising, and fees. Tax warrants will be issued on all unpaid personal property taxes on or about June 1.

Property Sold: forward this notice to the new owner(s).

Payment Options

PAY ONLINE



Visit LeeTC.com

Other ways to pay:

Mail: Check or money order.

Phone: 239.533.6000.

In Person: Cash, check, money order, debit card (PIN required), and all major credit cards.

Note: A convenience fee is charged when using a credit or debit card and is subject to service provider rates which may vary. No portion of this fee is retained by the Tax Collector's office.

Note: If using your bank's online bill pay, make sure you allow for processing time so payment arrives by the received date listed on the front of this notice.

Confirm Payment

Confirm receipt of your payment online at our official website LeeTC.com. Your taxes are not considered paid until your payment clears our bank and is applied to your tax account.

Have you met Edison?

Edison is our automated chatbot that can answer many of your questions relating to property taxes and much more. Available 24/7, you can find Edison at the bottom of our website, LeeTC.com.



NOTICE: Pursuant to Florida Statute 590.125(5), be advised that the Florida Forest Service may be performing prescribed burning and/or other treatments in a project area that includes your property in Lee County, Florida. These efforts are to reduce fuel loads and threat of wildfires. These projects are planned to occur from the date of this notice until the same date the following year. This service is provided at no cost to the affected landowner(s). Contact the Florida Forest Service if you have questions regarding this service at: 10941 Palm Beach Blvd., Fort Myers, FL 33905, or 239.690.8001.

Our Mission: Deliver 5-Star service quickly and efficiently through an organizational culture that values customers, team, and community.

This Instrument Prepared by:
Stormy Wilder
BEST Title Solutions, Inc.
1205 Cape Coral Parkway
Cape Coral, FL 33904
Property Appraiser Parcel Number(s):
29-46-24-W2-0050D.0070

File No: 12-1014

CORPORATE WARRANTY DEED

This Deed Made and executed the 23 day of January, 2012, by Flamingo Holiday Homes, Inc., a Florida Corporation whose address is: 11700 Shelly Lane, Cape Coral, FL 33991, grantor, to David Andrews and Mardina Andrews, husband and wife, grantee, whose post office address is: 525 Dale Blvd. Winnipeg MB, Canada R3R 2J8.

WITNESSETH: That the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the grantee, all that certain land situate in Lee County, Florida, to wit:

Lot 7, Block D, Gulf Island Manor, as recorded in Plat Book 8, Page 68, in the Public Records of Lee County, Florida.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.
To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that it is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to, reservations, restrictions and easements of record, if any.
(Wherever used herein the terms "grantor" and grantee" included all the parties to this instrument, and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporation)

12-1014

IN WITNESS WHEREOF, the grantor has caused these presents to be executed in its name, by its proper officer thereunto duly authorized, the day and year first above written.

TWO SEPARATE WITNESSES REQUIRED

Flamingo Holiday Homes, Inc., a Florida Corporation

Witness Signature: Esther L. Teeter (1)

BY

Tatjana Plattner
Vice PresidentPrint Witness Name: Esther L. Teeter (1)Witness Signature: LAURA PASCHALL (2)Print Witness Name: LAURA PASCHALL (2)STATE OF FLORIDACOUNTY OF LEE

The foregoing instrument was acknowledged before me this 23rd day of JANUARY, 2012 by Tatjana Plattner as Vice President of Flamingo Holiday Homes, Inc., a Florida Corporation. Who is personally known to me or has produced KC as identification.

The undersigned is a Notary for the State and County aforesaid

Esther L. Teeter
Signature of Notary Public
I am a Notary of the State of FLORIDA
My Commission Expires Sept. 10, 2014

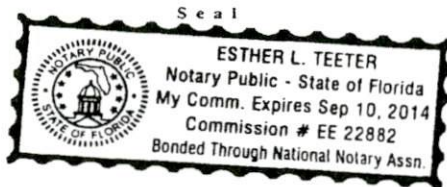


EXHIBIT B



EXHIBIT C



Town of Fort Myers Beach

CODE COMPLIANCE

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

April 22, 2022

CASE NUMBER:	20220371
CERTIFIED MAIL:	CANADA

ANDREWS DAVID + MARDINA
525 DALE BLVD
WINNIPEG, MB R3R 2J8

SITE ADDRESS: **144 GULF ISLAND DR**
PARCEL STRAP NO: **294624W20050D0070**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **01/24/2022** by Town of Fort Myers Beach Code Enforcement Officer **James Campbell** indicates that the property is in violation of the following Town Code(s):

Work Without Permit - Stairs

The Violation(s) can be brought into compliance by securing required permit(s) for stairs. Permit will be closely monitored until finalized. You are hereby directed to bring these violations into compliance within 15 days of receipt of this notice.

ONCE THIS VIOLATION(S) IS IN COMPLIANCE, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED TO VERIFY THAT THE VIOLATION(S) HAS BEEN 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 brought into compliance 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) 765-0202 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

James Campbell

Code Enforcement Officer
Town of Fort Myers Beach

Registered No. E376168582US

Date Stamp

04+0
07

Postage \$ 1.30

Extra Services & Fees

Extra Services & Fees, 15

Signature Confirmation

☐ Registered Mail \$

\$

☐ Return Receipt
(hardcopy) \$☐ Signature Confirmation
Restricted Delivery \$☐ Return Receipt
(electronic) \$☐ Signature Confirmation
Restricted Delivery \$☐ Restricted Delivery \$☐ Signature Confirmation
Restricted Delivery \$Customer Must Declare
Full Value

Received by

\$

Domestic Insurance up to \$50,000
is included based upon the
declared value. International
Indemnity is limited. (See Reverse)

OFFICIAL USE

Town of Fort Myers Beach

Code Enforcement

2525 Estero Boulevard

Fort Myers Beach, FL 33931

Andrews David + Mardina

525 Dale Blvd

Winnipeg, MB R3R 2R8

Canada

PS Form 3806, Registered Mail Receipt

Copy 2 - Post Office

April 2015, PSN 7530-02-000-9051

144 Gulf Island Dr
To Be Completed
By Post Office20220371
To Be Completed By Customer
(Please Print)
All Entries Must Be in Ballpoint or Typed

FROM

TO

Track Another Package +

Tracking Number: RE376168582US

Remove X

Your item was delivered in CANADA at 10:42 am on May 16, 2022.

 **Delivered**

May 16, 2022 at 10:42 am
CANADA

Feedback

Text & Email Updates

▼

Tracking History

▲

May 16, 2022, 10:42 am

Delivered
CANADA

Your item was delivered in CANADA at 10:42 am on May 16, 2022.

May 16, 2022, 6:31 am

Arrival at Post Office
CANADA

May 16, 2022, 12:20 am

Arrived at Facility
CANADA

May 10, 2022, 8:56 am

Customs Clearance

CANADA

May 10, 2022, 8:56 am

Processed Through Facility

CANADA

May 3, 2022, 8:45 am

Processed Through Regional Facility

JAMAICA NY INTERNATIONAL DISTRIBUTION CENTER

May 3, 2022, 8:44 am

Arrived at USPS Regional Facility

JAMAICA NY INTERNATIONAL DISTRIBUTION CENTER

May 3, 2022, 8:44 am

Arrived at Regional Facility

JAMAICA NY INTERNATIONAL DISTRIBUTION CENTER

April 28, 2022, 12:32 am

Arrived at USPS Facility

TAMPA, FL 33630

April 26, 2022, 10:03 pm

Departed USPS Facility

FORT MYERS, FL 33913

April 26, 2022, 10:00 pm

Arrived at USPS Facility

FORT MYERS, FL 33913

April 26, 2022, 12:50 pm

USPS in possession of item

FORT MYERS BEACH, FL 33931

Feedback

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

Feedback



Town of Fort Myers Beach
CODE COMPLIANCE
2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

April 22, 2022

CASE NUMBER:	20220371
CERTIFIED MAIL:	CANADA

ANDREWS DAVID + MARDINA
525 DALE BLVD
WINNIPEG, MB R3R 2J8

SITE ADDRESS: **144 GULF ISLAND DR**
PARCEL STRAP NO: **294624W20050D0070**

NOTICE OF VIOLATION

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Work Without Permit - Stairs

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ONCE THIS VIOLATION(S) IS IN COMPLIANCE, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED TO VERIFY THAT THE VIOLATION(S) HAS BEEN CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

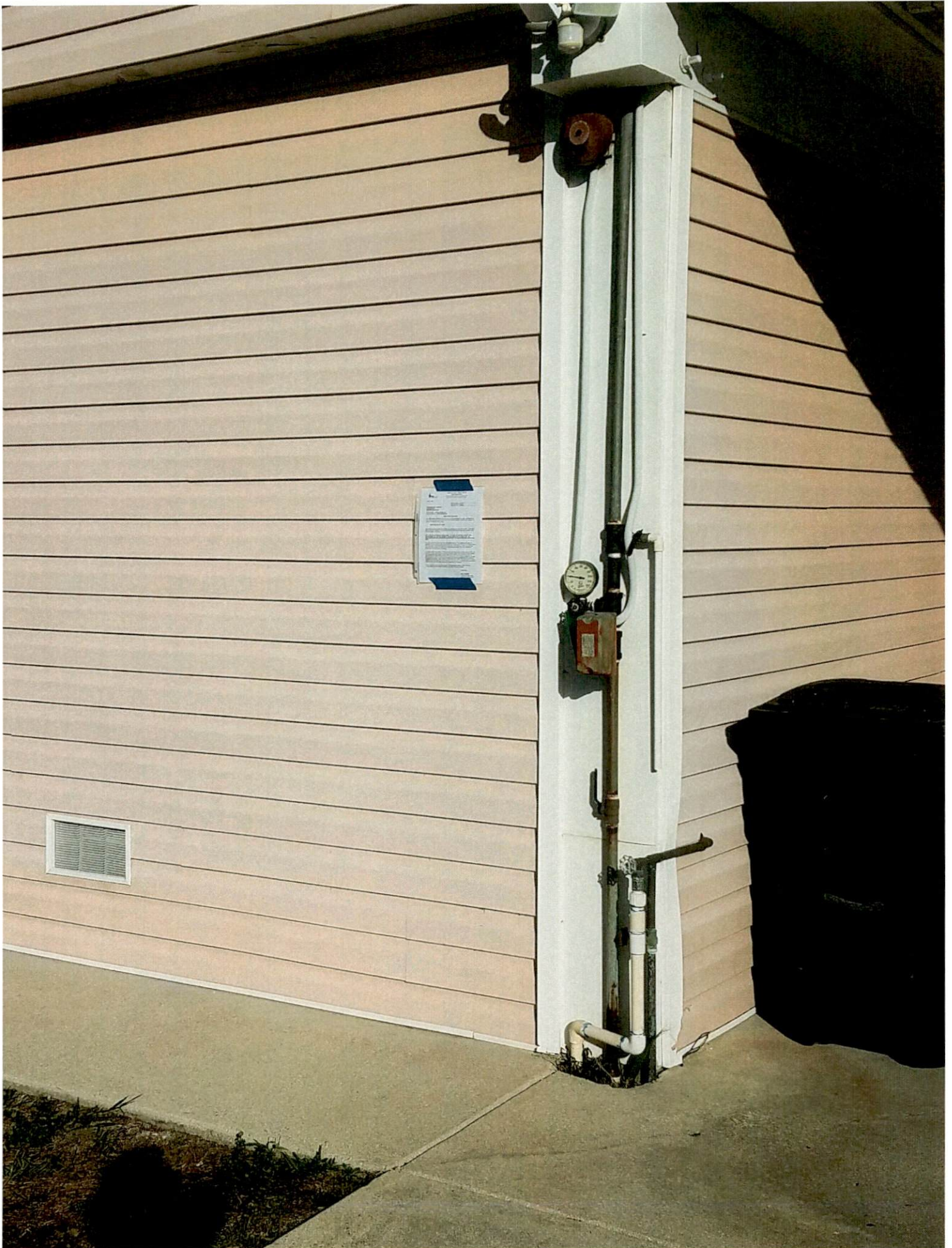
If you fail to correct the violation(s) by the date specified above, or if the violation(s) is brought into compliance and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case 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) 765-0202 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

James Campbell
Code Enforcement Officer
Town of Fort Myers Beach





Town of Fort Myers Beach

POSTING AFFIDAVIT FOR TOWN HALL
2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

Code Enforcement Case #: 20220371

Respondent: David and Mardina Andrews

Violation Address: 144 Gulf Island Dr.

STRAP #: 29-46-24-W2-0050D.0070

I, Kristin Schumacher, hereby state that the Notice of Violation was posted at
Town Hall Fort Myers Beach, FL on the 22nd day of March, 2022.

Kristin Schumacher
Signature

STATE OF FLORIDA COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of X physical
presence OR online notarization, this 9th day of July, 2024, by
Kristin Schumacher, X who is personally known to me OR who has produced
 as identification.



ASHLEY SHEPARD
Commission # HH 253125
Expires April 14, 2026

Ashley Shepard
(SEAL) Notary Public Signature

My Commission Expires: April 14, 2026

Sec. 2-429. - Notices.

- (a) All notices required by this article will be provided to the alleged violator by: (i) certified mail, return receipt requested, subject to the provisions of subsection (b) below; or (ii) by hand delivery by the sheriff or other law enforcement officer, code enforcement officer, or other person designated by the director; or (iii) by leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or (iv) in the case of commercial premises, leaving the notice with the manager or other person in charge.
- (b) If notice is sent via certified mail, return receipt requested, to the owner of the property in question at the address listed in the Lee County Tax Collector's Office for tax notices, and at any other address provided to the town by such owner, and is returned as unclaimed or refused, notice may be provided by posting as described in subsections (c)(1) and (2) below, and by first class mail directed to the addresses furnished to the town, with a properly executed proof of mailing or affidavit confirming the first class mailing.
- (c) In addition to provision of notice as set forth in subsection (a), notice may also be served by publication or posting, as follows:
 - (1) Such notice will be published once during each week for four consecutive weeks (four publications being sufficient) in a Lee County newspaper of general circulation. The newspaper must meet the requirements prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication must be made in accordance with F.S. §§ 50.041 and 50.051.
 - (2) In lieu of publication as described in subsection (c)(1) above, such notice may be posted for at least ten days prior to the hearing or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which must be the property upon which the violation is alleged to exist and the other must be at Town Hall for the Town of Fort Myers Beach. Proof of posting must be by affidavit of the person posting the notice. The affidavit must include a copy of the notice posted and the date and places of its posting.
 - (3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a) above.
- (d) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsections (a) and (b), together with proof of publication or posting as provided in subsection (c), will be sufficient to show the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

EXHIBIT D



FMBgov.com

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

07/23/2024

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

ANDREWS DAVID + MARDINA

Respondent.

Case Number:	20220371
Certified Mail:	International Registered Mail
Regular Mail:	

Site Address: **144 GULF ISLAND DR**Parcel Strap No.: **294624W20050D0070****AFFIDAVIT OF NON-COMPLIANCE**

STATE OF FLORIDA)

COUNTY OF LEE)

BEFORE ME, the undersigned authority, personally appeared Officer D. Batt, Code Enforcement Officer for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. I, D. Batt, am a person authorized by law to inspect violations of the Town of Fort Myers Beach Code contained herein and the statements set forth herein are based upon personal knowledge.

2. On 01/24/2022, former Code Officer, James Campbell, observed ANDREWS DAVID + MARDINA (property owner) in violation of Sec 6-111, FBC 105.1 of the Town of Fort Myers Beach Code of Ordinances, Work Without Permit -Stairs, at the property located at 144 GULF ISLAND DR, Fort Myers Beach, FL 33931 ("Subject Property").

3. A Notice of Violation was issued by James Campbell on 04/22/2022, and sent certified mail to the address of record, 525 DALE BLVD, WINNIPEG, MB R3R 2J8, posted to the violation property located at 144 GULF ISLAND DR, Fort Myers Beach, FL 33931, and posted to Town Hall located at 2731 Oak St., Fort Myers Beach, FL 33931.

4. Exhibit A which is attached to this affidavit includes:

- A copy of the Lee County Appraiser Property Data
- A copy of the current Lee County Tax Collector bill
- A copy of the Notice of Violation issued on 04/22/2022
- Pictures of the violation as observed on 01/24/2022
- Copy of USPS Tracking for Notice of Violation
- Corporate Warranty Deed
- Photos of reinspection on 07/08/2024

5. ANDREWS DAVID + MARDINA was/were given 15 days to come into compliance with the Town of Fort Myers Beach Ordinance, which was on or before 05/09/2022.

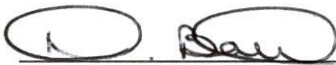
6. I, D. Batt, performed an inspection of the Subject Property on 07/08/2024, and the Subject Property remains in violation with the Town of Fort Myers Beach Ordinance. There does not appear to be any progress made towards compliance at 144 GULF ISLAND DR, Fort Myers Beach, FL 33931.

7. I have attached Exhibit B, which are photographs of the Subject Property, which I personally took, and which fairly represent the violation on the Subject Property I personally observed on 07/08/2024. These photographs have not been altered in any way.

8. I have personal knowledge of all these facts, and each is true to the best of my knowledge and belief.

9. The Town of Fort Myers Beach hereby has requested a hearing before the Special Magistrate and that an order be issued affording the appropriate relief, including an order to correct the above listed violation(s) and/or the imposition of an administrative fine not to exceed \$250.00 for each day each violation continues past the date for compliance or \$500.00 for each day each violation was repeated, and for such other and further relief as is consistent with the powers of the Special Magistrate.

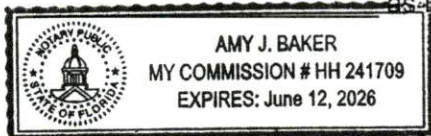
FURTHER AFFIANT SAYETH NAUGHT.



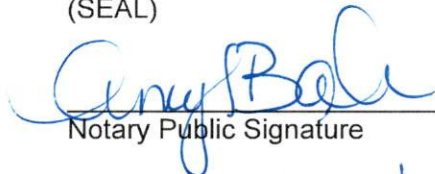
Signature of Affiant

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 23rd day of July, 2024, by D. Batt, ☒ who is personally known to me OR ☐ who has produced as identification.



(SEAL)



Notary Public Signature

My Commission Expires: June 12 2026



Property Data

STRAP: 29-46-24-W2-0050D.0070 Folio ID: 10229730

[Hurricane Ian Tax Roll Value Letter](#) [Tax Refund Status](#)

Generated on 7/9/2024 1:37 PM

Owner Of Record - Tenants by Entirety

[\[Change Mailing Address\]](#)

ANDREWS DAVID & MARDINA
525 DALE BLVD
WINNIPEG MB R3R 2J8
CANADA



Site Address

Site Address maintained by E911 Program Addressing

144 GULF ISLAND DR
FORT MYERS BEACH FL 33931

Property Description

Do not use for legal documents!

PARL IN GULF ISLAND MANOR BLK D REC IN PB 8 PG 68 DESC
IN OR 434 PG 233

[View Recorded Plat at LeeClerk.org](#) - Use this link to do an Official Records search on the Lee County Clerk of Courts website, using 8 and 68 for the book and page numbers.

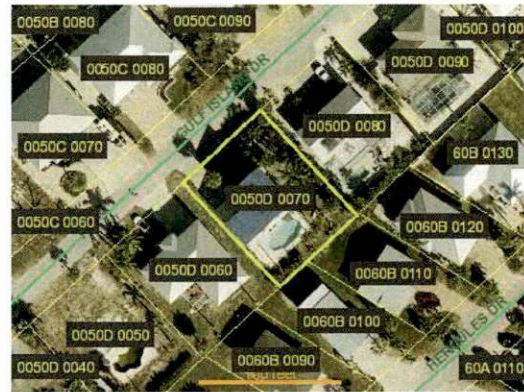
Attributes and Location Details

Total Bedrooms / Bathrooms	3 / 3.0
Gross Living Area	1,792
1st Year Building on Tax Roll	1995
Historic Designation	No

Township	Range	Section	Block	Lot
46	24E	29	0050D	0070
Municipality	Latitude	Longitude		
Town of Fort Myers Beach	26.44073	-81.9246		

[View Parcel on Google Maps](#)

[\[Tax Map Viewer\]](#) [\[View Comparables\]](#)



[\[Pictometry Aerial Viewer\]](#)

Image of Structure



◀ Photo Date March of 2012 ▶ ☐ View other photos

Last Inspection Date: 07/01/2022

Property Values / Exemptions / TRIM Notices

Generated on 7/9/2024 1:37 PM

No existing exemptions found for this property.

TRIM Notices	Tax Year	Just	Land	Market Assessed	Capped Assessed	Exemptions	Classified Use	Taxable
	Current	677,249	620,569	677,249	677,249	0	0	677,249
2023 Values / Additional Info	2023	732,649	379,298	732,649	643,804	0	0	643,804
2022 Values / Additional Info	2022	817,540	231,300	817,540	585,276	0	0	585,276
2021 Values / Additional Info	2021	560,895	167,600	560,895	532,069	0	0	532,069
2020 Values / Additional Info	2020	483,699	168,600	483,699	483,699	0	0	483,699
2019 Values / Additional Info	2019	471,599	162,100	471,599	471,599	0	0	471,599
2018 Values / Additional Info	2018	464,295	162,100	464,295	464,295	0	0	464,295
2017 Values / Additional Info	2017	461,884	154,400	461,884	434,708	0	0	434,708
2016 Values	2016	454,014	154,400	454,014	395,189	0	0	395,189
2015 Values	2015	383,198	154,400	383,198	359,263	0	0	359,263
2014 Values	2014	341,414	100,320	341,414	326,603	0	0	326,603
2013 Values	2013	296,912	146,900	296,912	296,912	0	0	296,912
2012 Values	2012	302,524	120,000	302,524	302,524	0	0	302,524
2011 Values	2011	301,258	120,000	301,258	301,258	0	0	301,258

2010 Values	2010	319,995	140,000	319,995	319,995	0	0	319,995
	2009	364,810	155,000	364,810	364,810	0	0	364,810
	2008	432,430	220,000	432,430	432,430	0	0	432,430
	2007	461,480	250,000	0	461,480	0	0	461,480
	2006	527,230	230,000	0	527,230	0	0	527,230
	2005	407,930	165,000	0	407,930	0	0	407,930
	2004	325,830	155,000	0	325,830	0	0	325,830
	2003	343,720	105,000	0	343,720	0	0	343,720
	2002	222,230	45,000	0	222,230	0	0	222,230
	2001	192,320	45,000	0	192,320	0	0	192,320
	2000	190,590	45,000	0	190,590	0	0	190,590
	1999	184,640	45,000	0	184,640	0	0	184,640
	1998	162,290	42,500	0	162,290	0	0	162,290
	1997	163,010	42,500	0	163,010	0	0	163,010
	1996	156,760	42,500	0	156,760	0	0	156,760
	1995	40,430	40,430	0	40,430	0	0	40,430
	1994	34,910	34,910	0	34,910	0	0	34,910
	1993	33,080	33,080	0	33,080	0	0	33,080
	1992	29,400	29,400	0	29,400	0	0	29,400

The **Just** value is the total parcel assessment (less any considerations for the cost of sale). This is the closest value to *Fair Market Value* we produce and is dated as of January 1st of the tax year in question ([F.A.C. 12D-1.002](#)).

The **Land** value is the portion of the total parcel assessment attributed to the land.

The **Market Assessed** value is the total parcel assessment (less any considerations for the cost of sale) based upon the assessment standard. Most parcels are assessed based either upon the *Highest and Best Use* standard or the *Present Use* standard ([F.S. 193.011](#)). For *Agriculturally Classified* parcels (or parts thereof), only agricultural uses are considered in the assessment ([F.S. 193.461\(6\)\(a\)](#)). The difference between the *Highest and Best Use/Present Use* and the *Agricultural Use* is often referred to as the *Agricultural Exemption*.
(i.e. Market Assessed = Just - Agricultural Exemption)

The **Capped Assessed** value is the *Market Assessment* after any *Save Our Homes* or *10% Assessment Limitation* cap is applied. This assessment cap is applied to all properties and limits year-to-year assessment increases to either the *Consumer Price Index* or 3%, whichever is lower for Homestead properties OR 10% for non-Homestead properties.

The **Exemptions** value is the total amount of all exemptions on the parcel.

The **Taxable** value is the *Capped Assessment* after exemptions (*Homestead, etc.*) are applied to it. This is the value that most taxing authorities use to calculate a parcel's taxes.
(i.e. Taxable = Capped Assessed - Exemptions)

Property Details (Current Working Values)

Generated on 7/9/2024 1:37 PM

Land

Land Tracts

Use Code	Use Code Description	Number of Units	Unit of Measure
100	Single Family Residential	1.00	Lot

Buildings

Building 1 of 1

Building Characteristics

Improvement Type	Model Type	Stories	Living Units
106 - Contemporary	1 - SINGLE FAMILY RESIDENTIAL	2.0	1
Bedrooms	Bathrooms	Year Built	Effective Year Built
3	3.0	1995	1996

Building Subareas

Description	Heated / Under Air	Area (Sq Ft)
BAS - BASE	Y	840
CFL - CATHEDRAL FLOOR AREA	Y	224
CFL - CATHEDRAL FLOOR AREA	Y	214
FOP - FINISHED OPEN PORCH	N	162
FUS - FINISHED UPPER STORY	Y	514
LCP - LOWER CARPORT / OPEN PORCH	N	1,426
PPT - POOL PATIO	N	924
STP - STOOP	N	316

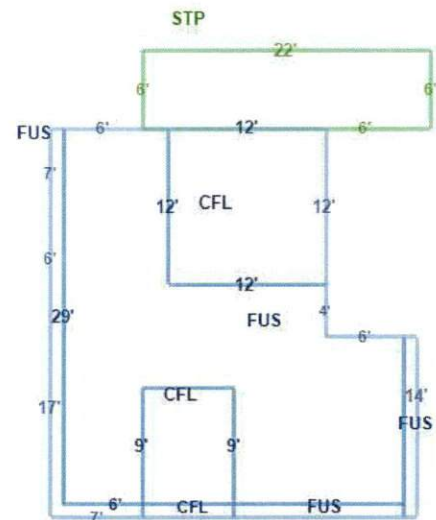
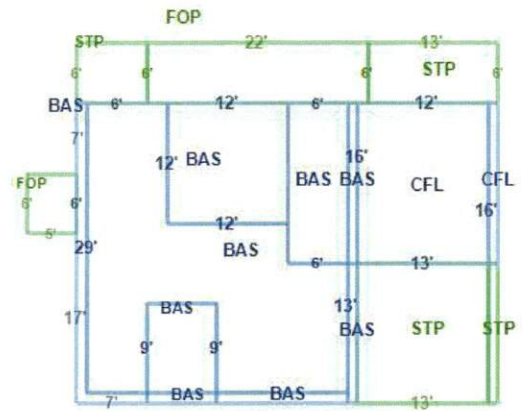
STP - STOOP

N

132

Building Features

Description	Year Added	Units
POOL - RESIDENTIAL	1995	308
PATIO - CONCRETE	1995	736



Land
Land Tracts

Use Code	Use Code Description	Number of Units	Unit of Measure
100	Single Family Residential	1.00	Lot

Buildings

Building 1 of 1

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Building Features

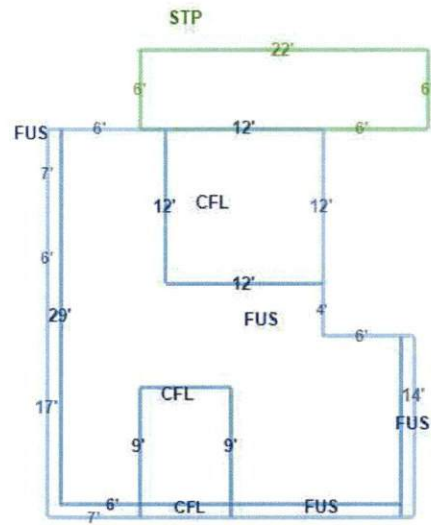
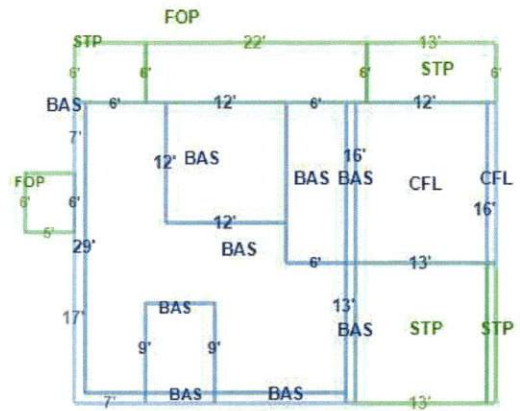
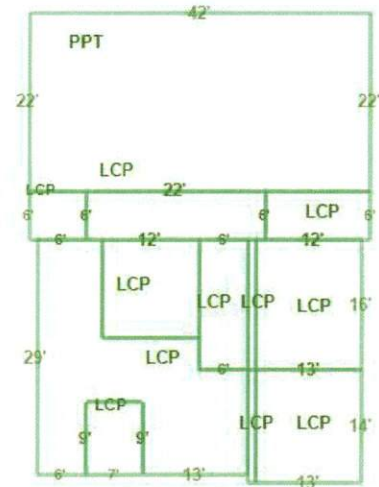
Description	Year Added	Units
POOL - RESIDENTIAL	1995	308
PATIO - CONCRETE	1995	736

Building Front Photo



Photo Date: March of 2012

Building Footprint



Taxing Authorities

Generated on 7/9/2024 1:37 PM

TOWN OF FT MYERS BEACH / 032

Name / Code	Category	Mailing Address
LEE CO GENERAL REVENUE / 044	County	LEE COUNTY OFFICE OF MGMT & BUDGET PO BOX 398 FORT MYERS FL 33902-0398
FORT MYERS BEACH FIRE CONTROL DIST / 032	Independent District	FORT MYERS BEACH FIRE CONTROL DIST 100 VOORHIS ST FORT MYERS BEACH FL 33931
FORT MYERS BEACH MOSQUITO CONTROL / 035	Independent District	FORT MYERS BEACH MOSQUITO CONTROL PO BOX 2837 FORT MYERS BEACH FL 33932-2837
FORT MYERS BEACH PUBLIC LIBRARY DIST / 033	Independent District	FORT MYERS BEACH PUBLIC LIBRARY DIST 2755 ESTERO BLVD FORT MYERS BEACH FL 33931
LEE CO HYACINTH CONTROL DIST / 051	Independent District	LEE CO HYACINTH CONTROL DIST 15191 HOMESTEAD RD LEHIGH ACRES FL 33971
WEST COAST INLAND NAVIGATION DIST / 098	Independent District	WEST COAST INLAND NAVIGATION DIST 200 MIAMI AVE E VENICE FL 34285-2408
TOWN OF FORT MYERS BEACH FLORIDA / 118	Municipal	TOWN OF FORT MYERS BEACH 2523 ESTERO BLVD FORT MYERS BEACH FL 33931
PUBLIC SCHOOL - BY LOCAL BOARD / 012	Public Schools	LEE COUNTY SCHOOL BOARD BUDGET DEPARTMENT 2855 COLONIAL BLVD FORT MYERS FL 33966
PUBLIC SCHOOL - BY STATE LAW / 013	Public Schools	LEE COUNTY SCHOOL BOARD BUDGET DEPARTMENT 2855 COLONIAL BLVD FORT MYERS FL 33966
SFWMD-DISTRICT-WIDE / 110	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406
SFWMD-EVERGLADES CONSTRUCTION PROJECT / 084	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406
SFWMD-OKEECHOBEE BASIN / 308	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406

Sales / Transactions

Generated on 7/9/2024 1:37 PM

Sale Price	Date	Clerk File Number	Type	Notes	Vacant/ Improved
305,300.00	01/23/2012	2012000018125	01		I
55,000.00	01/01/1995	2566/1232	06		V
100.00	12/01/1985	1822/474	01		V

[View Recorded Plat at LeeClerk.org](#)

Use the above link to do a search on the Lee County Clerk of Courts website, using **8** and **68** for the book and page numbers and **Plats Book** for the book type.

Help safeguard your home against property fraud. Sign up for the Lee Clerk's free [Property Fraud Alert](#).

Building / Construction Permit Data

Generated on 7/9/2024 1:37 PM

Permit Number	Permit Type	Date
241030	Building Remodel / Repair	04/23/2024
241018	AC New / Change out	04/10/2024
233454	Roof	04/27/2023
231175	Electric	03/01/2023
ROF16-0083	Roof	08/08/2016
199502326	Pool & Spa	03/09/1995
199500884	Residential	01/30/1995

IMPORTANT: THIS MAY NOT BE A COMPREHENSIVE OR TIMELY LISTING OF PERMITS ISSUED FOR THIS PROPERTY.

Note: The Lee County Property Appraiser's Office does not issue or maintain any permit information. The Building / Construction permit data displayed here represents only those records this Office may find necessary to conduct Property Appraiser business. Use of this information is with the understanding that in no way is this to be considered a comprehensive listing of permits for this or any other parcel.

The Date field represents the date the property appraiser received information regarding permit activity; it may or not represent the actual date of permit issuance or completion.

Full, accurate, active and valid permit information for parcels can only be obtained from the [appropriate permit issuing agency](#).

Parcel Numbering History

Generated on 7/9/2024 1:37 PM

Prior STRAP	Prior Folio ID	Renumber Reason	Renumber Date
29-46-24-05-0000D.0070	N/A	Reserved for Renumber ONLY	01/12/1995

Solid Waste (Garbage) Roll Data

Generated on 7/9/2024 1:37 PM

Solid Waste District	Roll Type	Category	Unit / Area	Tax Amount
001 - Service Area 1	R - Residential Category		1	302.38
Collection Days Garbage Thursday Recycling Thursday Horticulture Thursday				

Flood and Storm Information

Generated on 7/9/2024 1:37 PM

Flood Insurance Find my flood zone				Evacuation Zone
Community	Panel	Version	Date	
071C	0558	G	11/17/2022	A

Generated on 7/9/2024 1:37 PM



Lee County Tax Collector

Noelle Branning

2023 Paid Real Estate Tax Notice

Ad Valorem Taxes and Non-ad Valorem Assessments for Lee County, Florida

Account Number:
29-46-24-W2-0050D.0070
Alternate Key:
2100535821
Millage Code:
032

Site Address / Legal Description:
144 GULF ISLAND DR

PARL IN GULF ISLAND MANOR BLK D REC IN
PB 8 PG 68 DESC IN OR 434 PG 233

Exemptions/Values:

Assessed Value 732,649

* See message below

ANDREWS DAVID & MARDINA
525 DALE BLVD
WINNIPEG, MB R3R 2J8
CANADA

Paid 02/23/2024 INT-00-02099345 \$9,576.69

Ad Valorem Taxes Levying Authority

	Telephone	Mill Rate	Assessed	Exemption	Taxable	Amount
LEE COUNTY GENERAL REVENUE	239-533-2221	3.7623	643.804	0	643.804	2,422.18
PUBLIC SCHOOL - BY LOCAL BOARD	239-337-8215	2.2480	732,649	0	732,649	1,646.99
PUBLIC SCHOOL - BY STATE LAW	239-337-8215	3.1820	732,649	0	732,649	2,331.29
TOWN OF FORT MYERS BEACH	239-765-0202	0.9900	643.804	0	643.804	637.37
SFL WATER MGMT-DISTRICT LEVY	561-686-8800	0.0948	643.804	0	643.804	61.03
SFL WATER MGMT-EVERGLADE CONST	561-686-8800	0.0327	643.804	0	643.804	21.05
SFL WATER MGMT-OKEECHOBEE LEVY	561-686-8800	0.1026	643.804	0	643.804	66.05
FORT MYERS BEACH FIRE CONTROL DISTRICT	239-590-4200	2.9851	643.804	0	643.804	1,921.82
FORT MYERS BEACH MOSQUITO	239-463-6350	0.1123	643.804	0	643.804	72.30
FORT MYERS BEACH LIBRARY	239-463-9691	0.2355	643.804	0	643.804	151.62
LEE COUNTY HYACINTH CONTROL	239-694-2174	0.0217	643.804	0	643.804	13.97
WEST COAST INLAND NAVIGATION DISTRICT	941-485-9402	0.0394	643.804	0	643.804	25.37

Non-Ad Valorem Assessments Levying Authority

	Telephone	Rate	Amount
LEE COUNTY SOLID WASTE ASSESSMENT	239-533-8000		302.38

2023 Combined Total Ad Valorem and Non-Ad Valorem:

\$9,673.42

2023 Paid Real Estate

Tax Notice

Account: 29-46-24-W2-0050D.0070
Site Address: 144 GULF ISLAND DR,
FORT MYERS BEACH,
33931
Alternate Key: 2100535821

* If the address below is not correct, visit LeePA.org to update your address.
ANDREWS DAVID & MARDINA
525 DALE BLVD
WINNIPEG, MB R3R 2J8
CANADA

Make check payable to:

LEE COUNTY TAX COLLECTOR
PO BOX 1609
FORT MYERS FL 33902-1609

PAY ONLY ONE AMOUNT

If Received By: Feb 29, 2024
Amount Due: \$0.00

Phone/Email Contact: _____

For payment options and instructions, refer to the back of this notice.

Paid 02/23/2024 INT-00-02099345 \$9,576.69

Return with payment



IMPORTANT INSTRUCTIONS AND INFORMATION - PLEASE READ

Ad Valorem Taxes cover the period January 1 through December 31 of the tax year indicated on the front of this notice. Tax notices are mailed on or about November 1 and become delinquent April 1. Failure to receive a tax notice does not extend discounts or excuse taxpayers' responsibilities to pay taxes and applicable penalties for late payments. Installment tax notices are mailed in June, September, December and March. Installment payment discounts are: June (6%), September (4.5%) and December (3%).

Governmental Office Responsibilities



Lee County Tax Collector

The Tax Collector prints, mails, and collects payments based on the tax rolls certified by the Property Appraiser and Levying Authorities.

Contact the Tax Collector to:

- Pay your current or delinquent property taxes
- Learn about Partial Payment, Installment Payment, and Homestead Tax Deferral plans
- Print your tax bills and receipts

Phone: 239-533-6000 • Website: LeeTC.com



Lee County Property Appraiser

The Property Appraiser values properties and prepares and certifies the tax roll which includes assessed values, exemptions, legal description, assessed owner(s) name and mailing address.

Contact the Property Appraiser to:

- Ask questions about the assessed value or exemption of your property
- Change your mailing address
- File or check on Homestead and other exemptions

Phone: 239-533-6100 • Website: LeePA.org



Lee County Levying Authorities

Lee County Levying Authorities establish millage rates and assessments based on revenue needed for operating expenses.

Call your Levying Authority with direct questions regarding services provided or rates charged.

A list of Levying Authorities and phone numbers may appear on the front of this notice or can be found on your property tax bill.

Visit LeeTC.com/property-taxes for instructions on viewing your bill.

Discounts

The amounts indicated on the front of this notice represent the total taxes and assessments due (if applicable) less discounts allowed for early payment. When the discount period ends on a weekend or holiday, the discount is extended to the next business day. Taxes are due by March 31 of each year.

4% if paid in **NOVEMBER**

3% if paid in **DECEMBER**

2% if paid in **JANUARY**

1% if paid in **FEBRUARY**

Delinquent Taxes

Payment of delinquent taxes must be made in certified U.S. funds drawn on a U.S. bank. The amount due is determined by the date payment is received. Failure to pay delinquent taxes could result in the loss of your property. On April 1 the following charges are imposed by Florida Law:

Real Estate: 3% minimum interest and advertising costs. A tax certificate sale is held on or before June 1 resulting in additional charges.

Tangible Personal Property: 18% interest annually, cost of advertising, and fees. Tax warrants will be issued on all unpaid personal property taxes on or about June 1.

Property Sold: forward this notice to the new owner(s).

Payment Options

PAY ONLINE



Visit LeeTC.com

Other ways to pay:

Mail: Check or money order.

Phone: 239.533.6000.

In Person: Cash, check, money order, debit card (PIN required), and all major credit cards.

Note: A convenience fee is charged when using a credit or debit card and is subject to service provider rates which may vary. No portion of this fee is retained by the Tax Collector's office.

Note: If using your bank's online bill pay, make sure you allow for processing time so payment arrives by the received date listed on the front of this notice.

Confirm Payment

Confirm receipt of your payment online at our official website LeeTC.com. Your taxes are not considered paid until your payment clears our bank and is applied to your tax account.

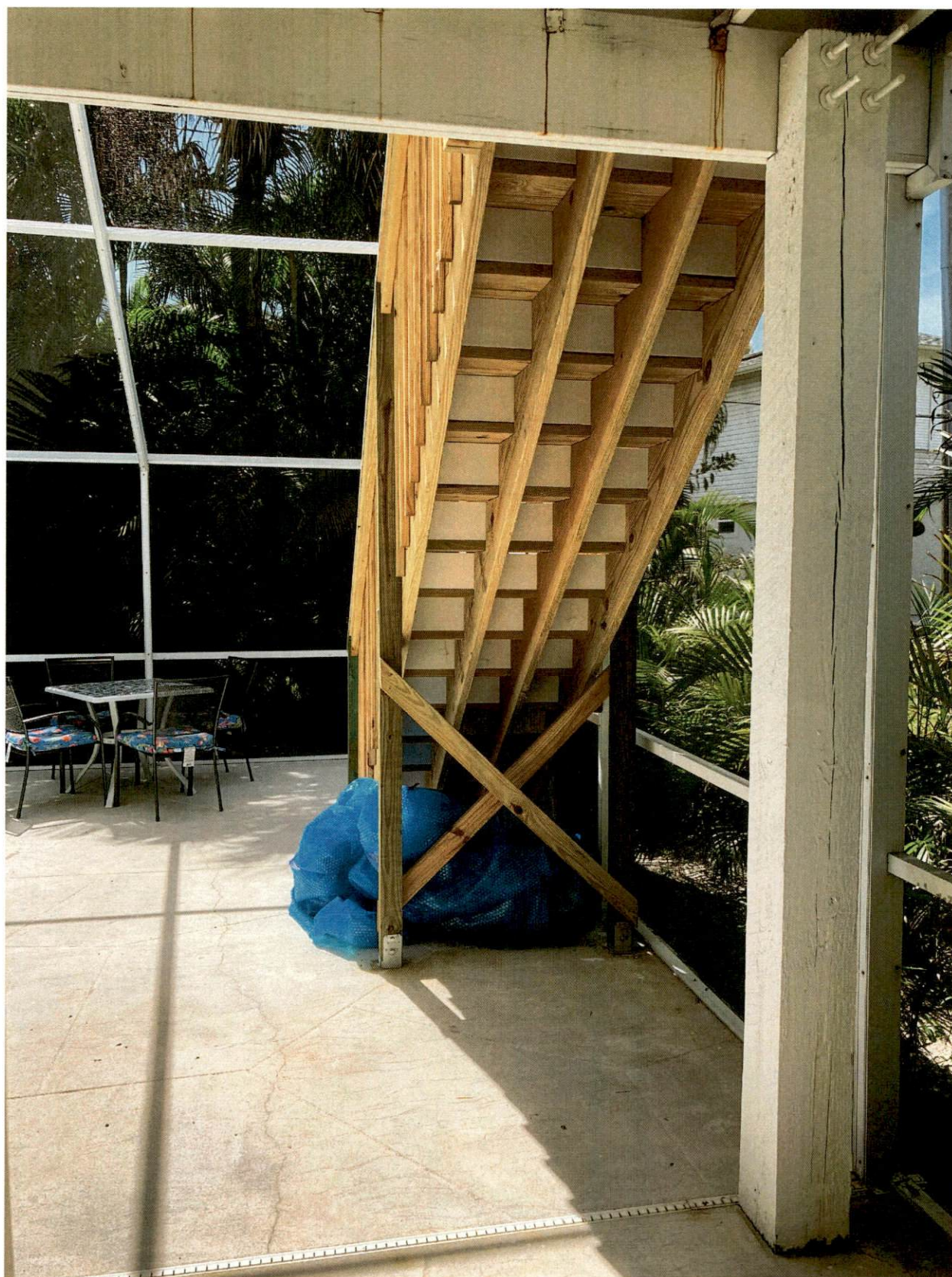
Have you met Edison?

Edison is our automated chatbot that can answer many of your questions relating to property taxes and much more. Available 24/7, you can find Edison at the bottom of our website, LeeTC.com.



NOTICE: Pursuant to Florida Statute 590.125(5), be advised that the Florida Forest Service may be performing prescribed burning and/or other treatments in a project area that includes your property in Lee County, Florida. These efforts are to reduce fuel loads and threat of wildfires. These projects are planned to occur from the date of this notice until the same date the following year. This service is provided at no cost to the affected landowner(s). Contact the Florida Forest Service if you have questions regarding this service at: 10941 Palm Beach Blvd., Fort Myers, FL 33905, or 239.690.8001.

Our Mission: Deliver 5-Star service quickly and efficiently through an organizational culture that values customers, team, and community.





Town of Fort Myers Beach

CODE COMPLIANCE

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

April 22, 2022

CASE NUMBER:	20220371
CERTIFIED MAIL:	CANADA

ANDREWS DAVID + MARDINA
525 DALE BLVD
WINNIPEG, MB R3R 2J8

SITE ADDRESS: **144 GULF ISLAND DR**
PARCEL STRAP NO: **294624W20050D0070**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **01/24/2022** by Town of Fort Myers Beach Code Enforcement Officer **James Campbell** indicates that the property is in violation of the following Town Code(s):

Work Without Permit - Stairs

The Violation(s) can be brought into compliance by securing required permit(s) for stairs. Permit will be closely monitored until finalized. You are hereby directed to bring these violations into compliance within 15 days of receipt of this notice.

ONCE THIS VIOLATION(S) IS IN COMPLIANCE, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED TO VERIFY THAT THE VIOLATION(S) HAS BEEN 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 brought into compliance 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) 765-0202 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

James Campbell

Code Enforcement Officer
Town of Fort Myers Beach

Track Another Package +

Tracking Number: RE376168582US

Remove X

Your item was delivered in CANADA at 10:42 am on May 16, 2022.

 **Delivered**

May 16, 2022 at 10:42 am
CANADA

Feedback

Text & Email Updates		▼
Tracking History		▲
May 16, 2022, 10:42 am Delivered CANADA Your item was delivered in CANADA at 10:42 am on May 16, 2022.		
May 16, 2022, 6:31 am Arrival at Post Office CANADA		
May 16, 2022, 12:20 am Arrived at Facility CANADA		

May 10, 2022, 8:56 am

Customs Clearance
CANADA

May 10, 2022, 8:56 am

Processed Through Facility
CANADA

May 3, 2022, 8:45 am

Processed Through Regional Facility
JAMAICA NY INTERNATIONAL DISTRIBUTION CENTER

May 3, 2022, 8:44 am

Arrived at USPS Regional Facility
JAMAICA NY INTERNATIONAL DISTRIBUTION CENTER

May 3, 2022, 8:44 am

Arrived at Regional Facility
JAMAICA NY INTERNATIONAL DISTRIBUTION CENTER

April 28, 2022, 12:32 am

Arrived at USPS Facility
TAMPA, FL 33630

April 26, 2022, 10:03 pm

Departed USPS Facility
FORT MYERS, FL 33913

April 26, 2022, 10:00 pm

Arrived at USPS Facility
FORT MYERS, FL 33913

April 26, 2022, 12:50 pm

USPS in possession of item
FORT MYERS BEACH, FL 33931

Feedback

Product Information



See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

Feedback

This Instrument Prepared by:
Stormy Wilder
BEST Title Solutions, Inc.
1205 Cape Coral Parkway
Cape Coral, FL 33904
Property Appraiser Parcel Number(s):
29-46-24-W2-0050D.0070

File No: 12-1014

CORPORATE WARRANTY DEED

This Deed Made and executed the 23 day of January, 2012, by Flamingo Holiday Homes, Inc., a Florida Corporation whose address is: 11700 Shelly Lane, Cape Coral, FL 33991, grantor, to David Andrews and Mardina Andrews, husband and wife, grantee, whose post office address is: 525 Dale Blvd. Winnipeg MB, Canada R3R 2J8.

WITNESSETH: That the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the grantee, all that certain land situate in Lee County, Florida, to wit:

Lot 7, Block D, Gulf Island Manor, as recorded in Plat Book 8, Page 68, in the Public Records of Lee County, Florida.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.
To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that it is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to, reservations, restrictions and easements of record, if any.
(Wherever used herein the terms "grantor" and "grantee" included all the parties to this instrument, and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporation)

12-1014

IN WITNESS WHEREOF, the grantor has caused these presents to be executed in its name, by its proper officer thereunto duly authorized, the day and year first above written.

TWO SEPARATE WITNESSES REQUIRED

Flamingo Holiday Homes, Inc., a Florida Corporation

Witness Signature: Esther L. Teeter (1)

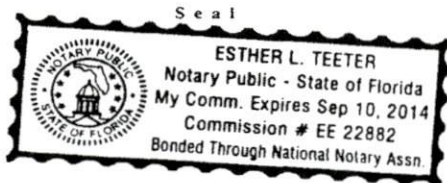
BY

Tatjana Plattner
Vice PresidentPrint Witness Name: Esther L. Teeter (1)Witness Signature: LAURA PASCHALL (2)Print Witness Name: LAURA PASCHALL (2)STATE OF FLORIDACOUNTY OF LSE

The foregoing instrument was acknowledged before me this 23rd day of January, 2012 by Tatjana Plattner as Vice President of Flamingo Holiday Homes, Inc., a Florida Corporation. Who is personally known to me or has produced KC as identification.

The undersigned is a Notary for the State and County aforesaid

Esther L. Teeter
Signature of Notary Public
I am a Notary of the State of FLORIDA
My Commission Expires Sept. 10, 2014





Jul 8, 2024 at 9:54:40 AM
Town of Fort Myers Beach



Jul 8, 2024 at 9:55:07 AM
Town of Fort Myers Beach



Jul 8, 2024 at 9:54:29 AM
Town of Fort Myers Beach



Jul 8, 2024 at 9:54:50 AM
Town of Fort Myers Beach

EXHIBIT E

PART 2—ADMINISTRATION AND ENFORCEMENT

**SECTION 103
DEPARTMENT OF BUILDING SAFETY
RESERVED**

**SECTION 104
DUTIES AND POWERS OF BUILDING OFFICIAL**

[A] 104.1 General. Reserved.

[A] 104.2 Applications and permits. Reserved.

[A] 104.2.1 Determination of substantially improved or substantially damaged existing buildings and structures in flood hazard areas. Reserved.

[A] 104.3 Notices and orders. Reserved.

[A] 104.4 Inspections. Reserved.

[A] 104.5 Identification. Reserved.

[A] 104.6 Right of entry. Reserved.

[A] 104.7 Department records. Reserved.

[A] 104.8 Liability. Reserved.

[A] 104.8.1 Legal defense. Reserved.

[A] 104.9 Approved materials and equipment. Materials, equipment and devices *approved* by the *building official* shall be constructed and installed in accordance with such approval.

[A] 104.9.1 Used materials and equipment. The use of used materials that meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless *approved* by the *building official*.

[A] 104.10 Modifications. Reserved.

[A] 104.10.1 Flood hazard areas. Reserved.

[A] 104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been *approved*. An alternative material, design or method of construction shall be *approved* where the *building official* finds that the proposed alternative meets all of the following:

1. The alternative material, design or method of construction is satisfactory and complies with the intent of the provisions of this code.
2. The material, method or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this code as it pertains to the following:
 - 2.1. Quality.
 - 2.2. Strength.
 - 2.3. Effectiveness.
 - 2.4. Fire resistance.

2.5. Durability.

2.6. Safety.

Where the alternative material, design or method of construction is not approved, the *building official* shall respond in writing, stating the reasons why the alternative was not approved.

[A] 104.11.1 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from *approved* sources.

[A] 104.11.2 Tests. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the *building official* shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the *building official* shall approve the testing procedures. Tests shall be performed by an *approved agency*. Reports of such tests shall be retained by the *building official* for the period required for retention of public records.

**SECTION 105
PERMITS**

[A] 105.1 Required. Any *owner* or *owner's* 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 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] 105.1.1 Annual facility permit. In lieu of an individual *permit* for each *alteration* to an existing electrical, gas, mechanical, plumbing or interior nonstructural office system(s), the *building official* is authorized to issue an annual *permit* for any occupancy to facilitate routine or emergency service, repair, refurbishing, minor renovations of service systems or manufacturing equipment installations/relocations. The building official shall be notified of major changes and shall retain the right to make inspections at the facility site as deemed necessary. An annual facility permit shall be assessed with an annual fee and shall be valid for one year from date of issuance. A separate permit shall be obtained for each facility and for each construction trade, as applicable. The permit application shall contain a general description of the parameters of work intended to be performed during the year.

[A] 105.1.2 Annual permit records. The person to whom an annual *permit* is issued shall keep a detailed record of *alterations* made under such annual *permit*. The *building*

Sec. 6-111. - Adoption; amendments.

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, with the exceptions set forth as follows:

Chapter 1, Administration.

Sections 103.1 through 103.6 relating to powers and duties of the building official are added as follows:

103.1 General. The building official is hereby authorized and directed to enforce the provisions of this code and building codes adopted by the state of Florida. The building official has the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures must be in compliance with the intent and purpose of this code, and may not have the effect of waiving requirements specifically provided for in this code.

103.2 Right of entry.

103.2.1 Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building, structure, premises, electrical, gas, mechanical, or plumbing systems unsafe, dangerous, or hazardous, the building official may enter such building, structure, or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code. If such building or premises are occupied, he must first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he must first make a reasonable effort to locate the owner or other persons having charge or control of such and request entry. If entry is refused, the building official has recourse to every remedy provided by law to secure entry.

103.2.2 When the building official has obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care, or control of any building, structure, or premises may fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official for the purpose of inspection and examination pursuant to this code.

103.3 Stop work orders. Upon notice from the building official, work on any building, structure, electrical, gas, mechanical, or plumbing system that is being done contrary to the provisions of this code, or in a dangerous or unsafe manner, must immediately cease. Such notice must be in writing and posted on the permit board, stating the reasons for the order. Work may only resume after lifting of the stop work order by the building official.

103.4 Revocation of permits. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any ordinance or regulation or any provision of any code of the Town of Fort Myers Beach.

103.4.1 Misrepresentation of application. The building official may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.

103.4.2 Violation of code provisions. The building official may revoke a permit upon determination by the building official that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the building, structure, electrical, gas, mechanical, or plumbing systems for which the permit was issued is in violation of, or not in conformity with, the provisions of this code.

103.5 Unsafe buildings or systems. All buildings, structures, electrical, gas, mechanical, or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and must be abated by repair and rehabilitation or by demolition in accordance with the provisions of the Unsafe Building Abatement Code (see article I of this chapter).

103.6 Requirements not covered by code. Any requirements necessary for the strength, stability, or proper operation of an existing or proposed building, structure, electrical, gas, mechanical, or plumbing system, or for the public safety, health, and general welfare, not specifically covered by this or the other technical codes, will be determined by the building official.

Section 104.1.4 is amended to read as follows:

104.1.4. Minor repairs.

Ordinary minor repairs, routine maintenance, or incidental work of a nonstructural nature may be made without a permit, provided that such repair shall not violate any of the provisions of the technical codes. For purposes of this section, "ordinary minor repairs" include the replacement of damaged or worn materials by similar new materials and any other repairs defined as such by the building official. Ordinary minor repairs under this section may not involve the cutting of any structural beam or supporting member or include any alterations that would increase habitable floor area, change the use of any portion of the building, remove or change any required means of egress or exit access, or affect the structural integrity or fire rating of the building.

Section 104.1.6, relating to time limitations, is amended to add the following:

104.1.6.1 A permit issued shall be construed to be a license to proceed with the work but shall not be construed as authority to violate, cancel, alter or set aside any of the provisions of this code, nor shall such issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans or in construction or of violations of this code. Although a permit issued to an owner is transferable to another owner, actual notice of the transfer of permit shall be given to the building official prior to the transfer. Building permits shall be issued following the approval of site and construction plans. Building permits on multifamily projects shall be issued on each individual building or structure. Multitenant occupancies, including but not limited to shopping malls, may be permitted on an individual building or structure (shell); however, individual permits shall be used separately for tenant spaces.

104.1.6.2 The first inspection required by the permit must be successfully completed within a six-month period of issuance or the permit shall be deemed invalid. All subsequent inspections shall be made within a six-month period of the most recent inspection until completion of work or the permit shall become invalid. For purposes of this section, the foundation inspection will be considered the first inspection.

104.1.6.3 The entire foundation must be completed within the first six months from the issuance of the permit. Partial inspections due to complexity of the foundation may be made with building inspector's approval, and job site plans shall be initialed by the inspector only on that portion of the plans that is inspected, and these inspections are for compliance to plans and specifications and are in no way to be construed as the first inspection. Subsequent inspections may be made until the entire foundation is completed. At that time, the foundation will be signed off as the first inspection. One or more extensions of the building permit for good cause may be granted by the building official on a project for a period not exceeding 90 days each. The request shall be made by written notice to the building official at least 30 days prior to expiration of the building permit. The building official may require compliance with any revised building code, mechanical code, plumbing code, electrical code, gas code, swimming pool code or fire code requirements in effect at the time of granting any extension to the building permit. Any extension request denied may be appealed to the town council by the applicant on a form provided by the building official. The council shall grant or deny the extension upon a finding of good cause or lack thereof. If granted, the extension or extensions shall not exceed a period of 90 days each.

Section 106.1.4 relating to new or changed land uses is added as follows:

106.1.4 New or changed land use. A certificate of occupancy will only be granted for a new or changed use of land if that use is allowable under ch. 34 of this code.

107.6.1 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to 105.14 and Section 107.6, shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.

117 VARIANCES IN FLOOD HAZARD AREAS

117.1 Flood hazard areas. Pursuant to F.S. § 553.73(5), the variance procedures adopted in the local floodplain management ordinance shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the Florida Building Code, Building or, as applicable, the provisions of R322 of the Florida Building Code, Residential. This section shall not apply to Section 3109 of the Florida Building Code, Building.

Florida Building Code, Building, Section 1612.2.

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 10-year period for which the costs 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.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

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 that the alteration will not preclude the structure's continued designation as a historic structure.

Florida Building Code, Existing Building, Chapter 2.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has

sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

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 that the alteration will not preclude the structure's continued designation as a historic structure.

Florida Building Code, Residential, Section R322.

R322.1.11 Enclosed areas below design flood elevation. Enclosed areas, including crawl spaces, that are below the design flood elevation shall:

1. Be permitted to enclose up to 100 percent of the area below an elevated building and shall not extend beyond the perimeter of the building.
2. Have the interior portion of any enclosed area:
 - a. Partitioned only to separate parking areas from building access or storage areas;
 - b. The minimum number of interior doors necessary for access to the stairway or elevator to the elevated buildings from areas used for parking or storage;
 - c. Not temperature-controlled.
3. Have access to enclosed areas intended for building access or storage by no more than one standard 36-inch exterior door, or one windowless 72-inch double exterior door, in any exterior wall.
4. Have construction documents include an agreement, signed by the owner, acknowledging the limitations on allowable uses of the enclosed areas and the conditions of the building permit, using a form provided by the Floodplain Administrator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.

R322.1.12 Accessory structures. Accessory structures used for parking and storage shall be permitted below the base flood if designed and constructed in compliance with Section R322 and the total cost of an accessory structure does not exceed 10% of the market value of the building or \$17,500 per dwelling unit, whichever is greater. The dollar amount specified may be increased each year beginning in 2014 by the percentage increase of the Consumer Price Index - All Urban Consumers (CUP-U), All Items, U.S. City Average maintained by the federal Bureau of Labor Statistics.

Chapter 33, Site Work, Demolition and Construction.

Section 3311.5 is added, to read as follows:

3311.5 Trash containers.

It shall be unlawful to bury construction debris on the construction site or on any other public or private property not specifically approved for such use. A suitable trash container and adequate collection service shall be provided for each construction site. For purposes of this requirement, a suitable container is any structure, device, receptacle, designated location or combination thereof which holds construction debris on the construction site in a central location long enough for it to be removed from the site by means of whatever collection service the contractor chooses to use or may be required to use pursuant to other applicable laws before such debris is: (1) washed or blown off-site, (2) contaminates subsurface elements, (3) becomes volatile or malodorous, (4) makes an attractive nuisance, or (5) otherwise becomes a threat to the public health, safety and welfare.

Chapter 34, Existing Buildings.

Section 3401.1, relating to scope, is modified to read as follows:

3401.1 Scope. Provisions of this chapter and of division 4 of this article shall govern the application of this code to existing buildings. In interpreting this code, the building official may be guided by the Nationally Applicable Recommended Rehabilitation Provisions, published in 1997 by the U.S. Department of Housing and Urban Development.

Exception: Buildings and structures located within the High Velocity Hurricane Zone shall comply with the provisions of sections 3401.5, 3401.8, and 3401.2.2.1.

Section 3401.2.2.1, relating to change of occupancy, is deleted, and replaced with a new section 3401.2.2.1, to read as follows:

3401.2.2.1 If the occupancy classification or any occupancy subclassifications of any existing building or structure is changed to a more hazardous occupancy, the building, electrical, gas, mechanical, and plumbing systems shall be made to conform to the intent of the technical codes as required by the building official.

Section 3401.5, relating to special historic buildings, is deleted, and replaced with a new section 3401.5, to read as follows:

3401.5 Special historic buildings.

3401.5.1 The provisions of the technical codes relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such

building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving.

3401.5.2 If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards of this code, the building official may require the building to be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.

(Ord. No. 13-06, § 3, 9-3-2013; Ord. No. 17-09, § 2, 6-19-2017; Ord. No. 21-01, § 2(Exh. A), 3-15-2021)

EXHIBIT F



Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING
 2731 Oak Street Fort Myers Beach, FL 33931
 Phone: (239) 765-0202 Fax: (239) 765-0909

07/09/2024

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

ANDREWS DAVID + MARDINA
525 DALE BLVD
WINNIPEG, MB R3R 2J8,
Respondent.

Case Number:	20220371
Certified Mail:	International Registered Mail
Regular Mail:	

SITE ADDRESS: **144 GULF ISLAND DR**
 PARCEL STRAP NO: **294624W20050D0070**

NOTICE OF CODE ENFORCEMENT HEARING

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 162, Florida Statutes and Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that (an) uncorrected violation(s) of one or more codes of the Town of Fort Myers Beach, as described in the **NOTICE OF VIOLATION**, previously provided to you (a copy of which is enclosed herewith), exists on the above-described property. A hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has, therefore, been scheduled for **at 08/06/2024 at 1:30 P.M.** in the Council Chambers at Town Hall, located at 2731 Oak St., Fort Myers Beach, Florida.

A copy of the evidentiary case file and all materials provided by the Town to the Special Magistrate in relation to this hearing can be viewed and accessed in advance of the hearing at the link below:

<http://www.fortmyersbeachfl.gov/209/Meetings-Agendas>

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 any other action(s) that may affect your rights. If you believe you have come into compliance, it is your responsibility to contact the Code Enforcement Division so that an inspection can be performed to determine compliance.

D. Batt

Code Enforcement Officer
 Town of Fort Myers Beach

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 NOTIFY THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202, AT LEAST 72 BUSINESS HOURS BEFORE THE HEARING DATE.

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

Registered No.
RF734581578US

Date Stamp

#20220371 SN Ricket

To Be Completed
By Post Office
Gulf Island

Postage \$ **\$6.41**
Extra Services & Fees
☐ Registered Mail \$ **\$20.75**
☐ Return Receipt (hardcopy) \$ **\$5.80**
☐ Return Receipt (electronic) \$ **\$0.00**
☐ Restricted Delivery \$ **\$0.00**

Extra Services & Fees (continued)
☐ Signature Confirmation \$
☐ Signature Confirmation Restricted Delivery \$
Total Postage & Fees \$ **\$32.96**

Customer Must Declare Full Value \$ **\$0.00**

Received by
07/10/2024

Domestic Insurance up to \$50,000 is included based upon the declared value. International indemnity is limited. (See Reverse).



To Be Completed By Customer
(Please Print)
All Entries Must Be in Ballpoint or Typed

FROM	TO Fort Myers Beach Myers Beach
	2731 Oak Street
	Fort Myers Beach, FL 33931
	USA
TO	Andrews David + Mardina
	525 Canada Dale Blvd
	Winnipeg, MB R3R 2J8
	Canada

PS Form 3806, Registered Mail Receipt April 2015, PSN 7530-02-000-9051
Copy 1 - Customer (See Information on Reverse)
For domestic delivery information, visit our website at www.usps.com

USPS Tracking®

Tracking Number:

Remove X

RF734581578US

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

Feedback

Latest Update

Your item was delivered in CANADA at 9:06 am on July 25, 2024.

Delivered

Delivered

CANADA

July 25, 2024, 9:06 am

Out for Delivery

CANADA

July 25, 2024, 8:47 am

Arrival at Post Office

CANADA

July 25, 2024, 6:26 am

Arrived at Facility

CANADA

July 25, 2024, 1:58 am

Departed Facility

CANADA

July 24, 2024, 12:16 am

Arrived at Facility

CANADA

July 23, 2024, 2:07 am

Processed through Facility

TORONTO-A, CANADA
July 22, 2024, 9:13 pm

Customs Clearance Processing Complete

CANADA
July 22, 2024, 9:12 pm

Processed Through Facility

CANADA
July 22, 2024, 9:11 pm

Customs Clearance

CANADA
July 22, 2024, 9:11 pm

In Transit to Next Facility

July 22, 2024

Arrived at USPS Regional Facility

JAMAICA NY INTERNATIONAL DISTRIBUTION CENTER, UNITED STATES
July 18, 2024, 10:54 am

Processed Through USPS Regional Facility

JAMAICA NY INTERNATIONAL DISTRIBUTION CENTER
July 18, 2024, 10:41 am

Arrived at USPS Regional Facility

JAMAICA NY INTERNATIONAL DISTRIBUTION CENTER
July 18, 2024, 10:25 am

Arrived at USPS Regional Facility

JAMAICA NY INTERNATIONAL DISTRIBUTION CENTER, UNITED STATES
July 18, 2024, 10:25 am

Processing at USPS Facility

TAMPA, FL 33630
July 11, 2024, 11:30 pm

Processing at USPS Facility

FORT MYERS, FL 33913
July 10, 2024, 9:56 pm

Processing at USPS Facility

FORT MYERS, FL 33913
July 10, 2024, 9:53 pm

USPS in possession of item
FORT MYERS BEACH, FL 33931
July 10, 2024, 1:09 pm

Hide Tracking History

What Do USPS Tracking Statuses Mean? (<https://faq.usps.com/s/article/Where-is-my-package>)

Text & Email Updates 

Product Information 

See Less 

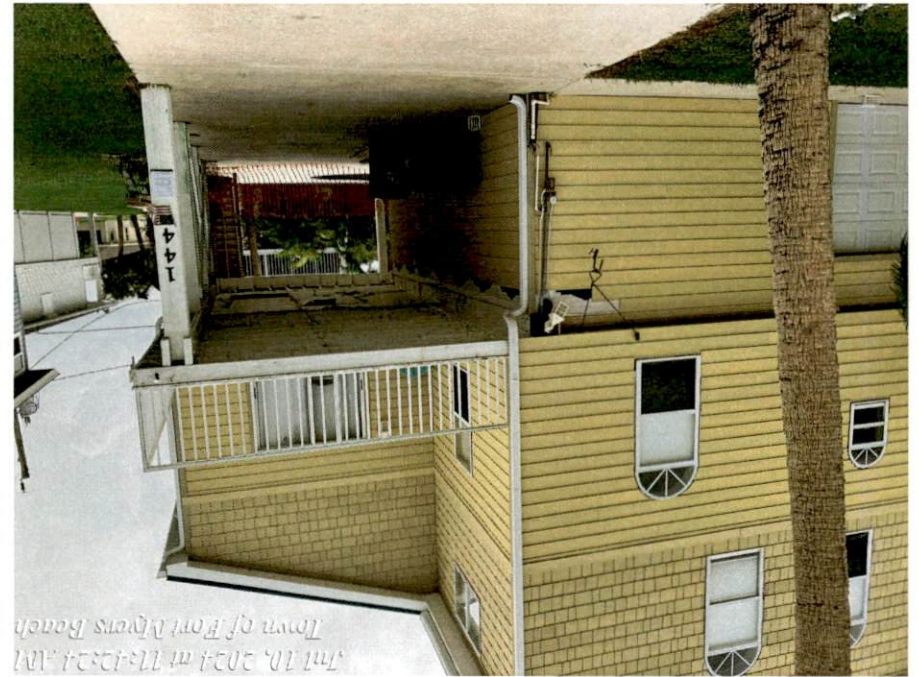
Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs



7/9/24, 2:24 PM

hwrq.net/hwrq/0_Pages/popupEditLetterPrint.php?sid=NH6N6M85V2VTMQWCC8TYN3QNHJ400&id=3797958&k=2682&letterlinkid=...



Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING
2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

07/09/2024

Case Number:	20220371
Certified Mail:	International Registered Mail
Regular Mail:	

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

ANDREWS DAVID + MARDINA
525 DALE BLVD
WINNIPEG, MB R3R 2J8,
Respondent.

SITE ADDRESS: 144 GULF ISLAND DR
PARCEL STRAP NO: 294624W20050D0070

NOTICE OF CODE ENFORCEMENT HEARING

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D. Batt

Code Enforcement Officer
Town of Fort Myers Beach

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 NOTIFY THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202, AT LEAST 72 BUSINESS HOURS BEFORE THE HEARING DATE.

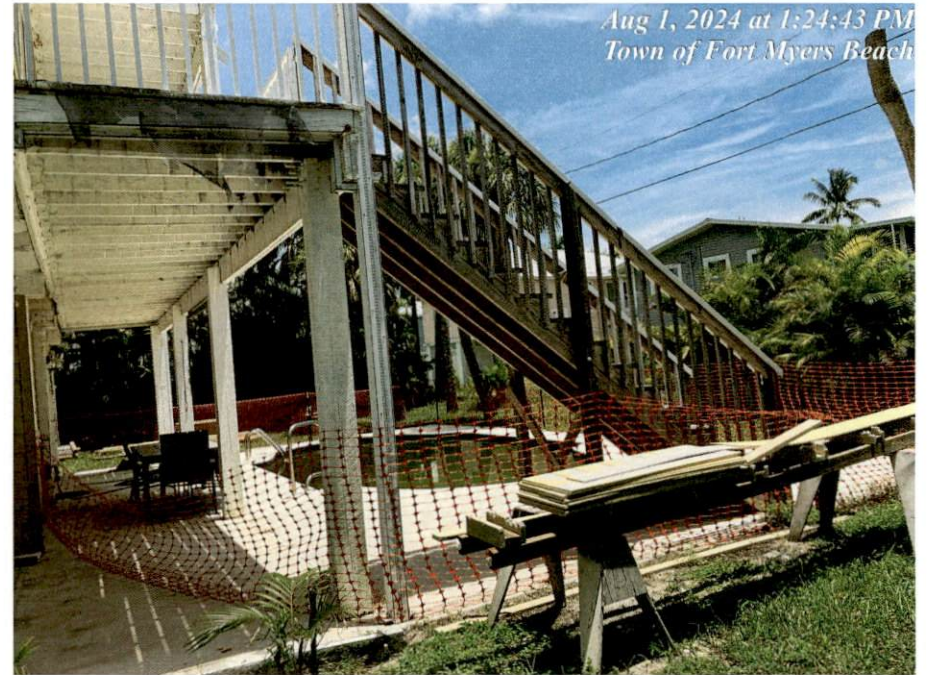
IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THE TAKING AND PREPARATION OF A

Staples

Jul 10, 2024 at 12:00:03 PM
Town of Fort Myers Beach



Aug 1, 2024 at 1:23:58 PM
Town of Fort Myers Beach



Aug 1, 2024 at 1:24:43 PM
Town of Fort Myers Beach



Aug 1, 2024 at 1:23:45 PM
Town of Fort Myers Beach



Aug 1, 2024 at 1:24:16 PM
Town of Fort Myers Beach

EXHIBIT G

PARCEL #: 29-46-24-W2-0050D.0070
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2731 Oak Street
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. 20220371

ANDREWS, DAVID & MARDINA,

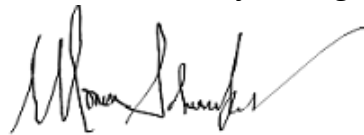
Respondent.

CODE ENFORCEMENT ORDER TO CONTINUE CASE

NOTICE IS HEREBY GIVEN THAT THE SPECIAL MAGISTRATE CONTINUES THE ABOVE ACTION, WITHOUT ENTERING FINDINGS OF FACT. FURTHER PROCEEDINGS IN THIS MATTER WILL BE HELD ON: September 5, 2024.

The hearing will be held at the Town of Fort Myers Beach Town Hall, 2731 Oak Street, Fort Myers Beach, Lee County, Florida, and the Respondent is urged to be present if the violation has not been abated by that date.

ORDERED this 6th day of August 2024 and executed this 13th day of August, 2024.



Monica Schmucker, Special Magistrate

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 26 day of August, 20__ to:

David & Mardina Andrews
525 Dale Blvd.
Winnipeg, MB R3R 2J8
Canada

WA S. M.
Magistrate 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: Amy Baker Dated: August 14, 2024
Town Clerk

EXHIBIT H


[FMBgov.com](https://www.fmbgov.com)

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

08/27/2024

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

ANDREWS DAVID + MARDINA

Respondent.

 Site Address: 144 GULF ISLAND DR
 Parcel Strap No.: 294624W20050D0070

Case Number: 20220371

Certified Mail:

Regular Mail:

AFFIDAVIT OF COMPLIANCE

STATE OF FLORIDA)

COUNTY OF LEE)

BEFORE ME, the undersigned authority, personally appeared Officer D. Batt, Code Enforcement Officer for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. I, D. Batt, am a person authorized by law to inspect violations of the Town of Fort Myers Beach Code contained herein and the statements set forth herein are based upon personal knowledge.

2. On 01/24/2022, ANDREWS DAVID + MARDINA (property owner) was observed in violation of Section 6-111- Adoption; amendments, Florida Building Code Section 105.1 of the Town of Fort Myers Beach Code of Ordinances, Work Without Permit - Stairs, at the property located at 144 GULF ISLAND DR, Fort Myers Beach, FL 33931 ("Subject Property").

3. A Notice of Violation was issued on 04/22/2022, and sent certified mail to the address of record, 525 DALE BLVD, WINNIPEG, MB R3R 2J8, posted to the violation property located at 144 GULF ISLAND DR, Fort Myers Beach, FL 33931, and posted to Town Hall located at 2731 Oak St., Fort Myers Beach, FL 33931.

4. ANDREWS DAVID + MARDINA was/were given 15 days to come into compliance with the Town of Fort Myers Beach Ordinance, which was on or before 05/31/2022.

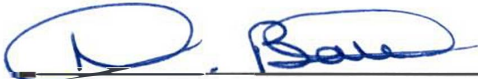
5. I performed an inspection for the violation of stairs without a permit on 08/27/2024 in our permitting system, and the violation was brought into compliance via the issuance of permit 221063 on 8/7/2024.

6. I have attached Exhibit A, which are photographs of the Subject Property, which I personally took, and which fairly represent the current condition of the Subject Property I personally observed on 08/27/2024. These photographs have not been altered in any way. Also attached, is the issued building permit 221063 for the stairs.

7. I have personal knowledge of all these facts, and each is true to the best of my knowledge and belief.

8. The Town of Fort Myers Beach hereby has determined the property located at 144 GULF ISLAND DR is in compliance with Fort Myers Beach Code of Ordinances.

FURTHER AFFIANT SAYETH NAUGHT.



Signature of Affiant

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence
OR ☐ online notarization, this 29th day of August, 2024 by
D. Batt, ☒ who is personally known to me OR ☐ who has produced
_____ as identification.

(SEAL)



Notary Public Signature

My Commission Expires: 4/5/28





Residential PERMIT

Permit Number:
221063

To check the status of your permit or schedule inspections go to the website below.

<http://www.fortmyersbeachfl.gov/971/Building-Services>

DATE ISSUED:
08/07/2024
EXPIRES
02/07/2025

Next business day inspections need to be requested before 4 p.m. Requests received after 4 p.m. cannot be scheduled until two business days after the request is received.

If your permit requires any fire inspections please schedule by emailing: prevention@fmbfire.org along with the permit number, site address, inspection type & any notes to the inspector

JOB LOCATION: 144 GULF ISLAND DR		Strap #: 294624W20050D0070
PROPERTY OWNER: ANDREWS DAVID + MARDINA 525 DALE BLVD WINNIPEG MB R3R 2J8	CONTRACTOR M.R. Wilt Construction LLC 872 Lake McGregor Dr. Fort Myers FL 33919 Fort Myers FL 33919	PERMIT TYPE: Residential SUBTYPE: Accessory Structure
DESCRIPTION OF WORK: Replace rotted wood stairs		
NOTES		

DATE BY

DATE BY

DATE BY

BLD - 105 Rough Framing
BLD - 106 Final Building

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.

THIS CARD MUST BE PLACED ON A BOARD AT EYE LEVEL SO IT CAN BE READ FROM STREET AND BE PROTECTED FROM THE WEATHER.

NOTICE: 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 WATER MANAGEMENT DISTRICTS, STATE AGENCIES, OR FEDERAL AGENCIES. THIS PERMIT IS VOID IF THE FIRST INSPECTION IS NOT MADE WITH SIX (6) MONTHS FROM THE DATE ISSUED OR IF NO INSPECTION HAS BEEN MADE FOR A PERIOD OF SIX (6) MONTHS FROM THE MOST RECENT PASSED INSPECTION. BUILDING PLANS MUST BE ON JOB AT TIME OF INSPECTION. REINSPECTION FEE \$50.00.

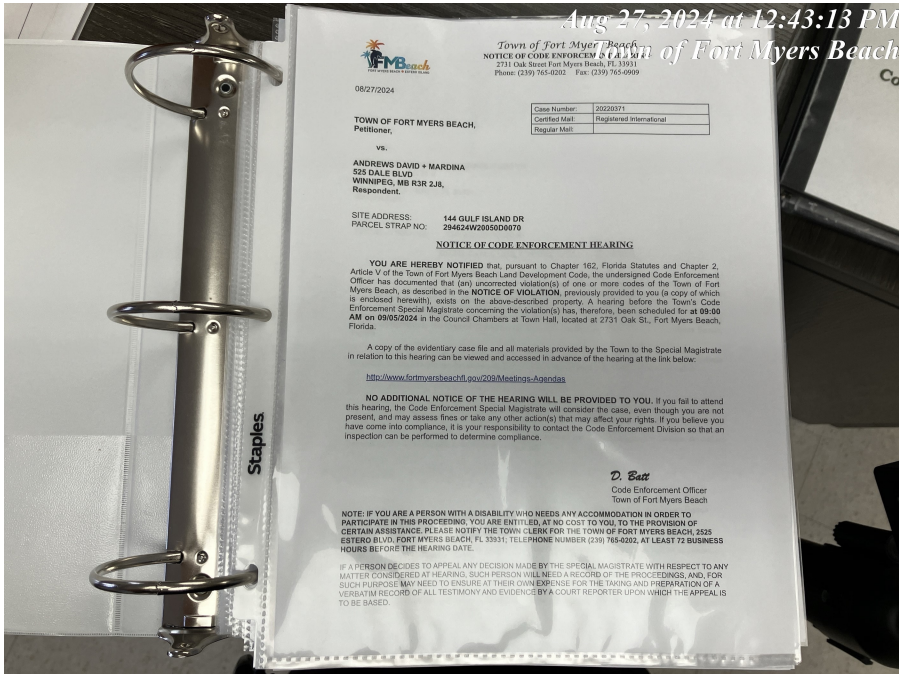


EXHIBIT I



Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING

2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

08/27/2024

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

ANDREWS DAVID + MARDINA
525 DALE BLVD
WINNIPEG, MB R3R 2J8,
Respondent.

Case Number:	20220371
Certified Mail:	Registered International
Regular Mail:	

SITE ADDRESS: **144 GULF ISLAND DR**
PARCEL STRAP NO: **294624W20050D0070**

NOTICE OF CODE ENFORCEMENT HEARING

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 162, Florida Statutes and Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that (an) uncorrected violation(s) of one or more codes of the Town of Fort Myers Beach, as described in the **NOTICE OF VIOLATION**, previously provided to you (a copy of which is enclosed herewith), exists on the above-described property. A hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has, therefore, been scheduled for **at 09:00 AM on 09/05/2024** in the Council Chambers at Town Hall, located at 2731 Oak St., Fort Myers Beach, Florida.

A copy of the evidentiary case file and all materials provided by the Town to the Special Magistrate in relation to this hearing can be viewed and accessed in advance of the hearing at the link below:

<http://www.fortmyersbeachfl.gov/209/Meetings-Agendas>

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 any other action(s) that may affect your rights. If you believe you have come into compliance, it is your responsibility to contact the Code Enforcement Division so that an inspection can be performed to determine compliance.

D. Batt

Code Enforcement Officer
Town of Fort Myers Beach

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 NOTIFY THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202, AT LEAST 72 BUSINESS HOURS BEFORE THE HEARING DATE.

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 BY A COURT REPORTER UPON WHICH THE APPEAL IS TO BE BASED.

Property Address and Owner:

Hearing Date: September 5, 2024

Case Number: 20240249

Violation: Operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit.

Code Section: LDC Sec. 34-3203 - Illegal buildings, uses and lots.

Code Officer: D. Batt

Subject:

Operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit.

Code Section:

LDC Sec. 34-3203 - Illegal buildings, uses and lots.

Reference Number:

20240249

Strap Number:

19-46-24-W4-00402.0010

Officer:

D. Batt

Narrative:

Case Number: 20240249

Violation: Operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit.

Code Section: LDC Sec. 34-3203 - Illegal buildings, uses and lots.

Code Officer: D. Batt

Attachments:

1. Exhibit A- Establishment of Ownership
2. Exhibit B- Photos of Initial Site Inspection
3. Exhibit C- Notice of Violation and Service
4. Exhibit D- Affidavit of Non Compliance
5. Exhibit E- Referenced Town of Fort Myers Beach Code of Ordinances
6. Exhibit F- Notice of Hearing for 8/6/2024
7. Exhibit G- Service and Affidavit of NonCompliance
8. Exhibit H- Establishment of Repeat Violation
9. Exhibit I- Order Continuing, Partial Findings and Conclusions of Law
10. Exhibit J- Key Estero Shops, LLC Brief and Appendix
11. Exhibit K- Town of Fort Myers Beach Reply Brief and Appendix
12. Exhibit L- Affidavit of NonCompliance
13. Exhibit M- Notice of Hearing

Town Recommendations:

The Town requests that an order issued finding a violation of Sec. 34-3203, including an order

to correct the above listed violation(s) and the imposition of an administrative fee of \$250.00 to cover costs in bringing this matter before the Special Magistrate, to establish a repeat offense, and we're asking you to impose a fine not to exceed \$500.00 for each day each violation continues past the date for compliance as this is a repeat violation, and for such other and further relief as is consistent with the powers of the Special Magistrate.

Town Approvals:

Thomas Yozzo, Operations & Compliance Manager

Date: August 27, 2024

nancy stuparich, Town Attorney

Date: August 29, 2024

EXHIBIT A

Property Data

STRAP: 19-46-24-W4-00402.0010 Folio ID: 10227974

[Hurricane Ian Tax Roll Value Letter](#) [Tax Refund Status](#)

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Owner Of Record - Sole Owner [\[Change Mailing Address\]](#)

[\[Tax Map Viewer\]](#) [\[View Comparables\]](#)

KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD MI 48381

Site Address

Site Address maintained by E911 Program Addressing

1661 ESTERO BLVD
FORT MYERS BEACH FL 33931

Property Description

Do not use for legal documents!

HILLS T P SUBD PB 3 PG 84 PT LT 11 DESC OR 1468 PG 1697
LESS N 275 FT

[View Recorded Plat at LeeClerk.org](#) - Use this link to do an Official Records search on the Lee County Clerk of Courts website, using 3 and 84 for the book and page numbers.

Attributes and Location Details

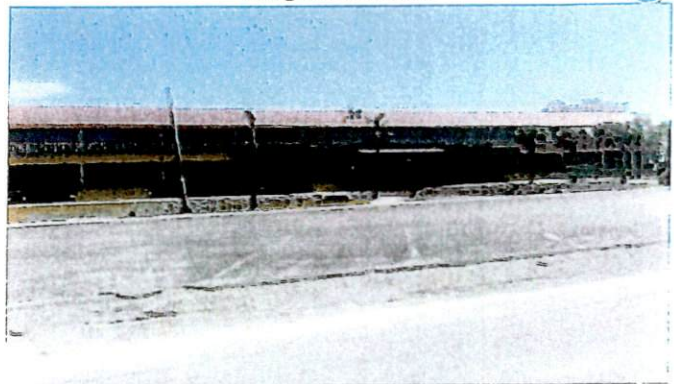
Total Bedrooms / Fixtures	0 / 78
Gross Building Area	33,438
1st Year Building on Tax Roll	1976
Historic Designation	No

Township	Range	Section	Block	Lot
46	24E	19	00402	0010
Municipality	Latitude	Longitude		
Town of Fort Myers Beach	26.45151	-81.94921		



[\[Pictometry Aerial Viewer\]](#)

Image of Structure



◀ Photo Date January of 2024 ▶ ☐ View other photos

Last Inspection Date: 01/31/2024

[View Parcel on Google Maps](#)

Property Values / Exemptions / TRIM Notices

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No existing exemptions found for this property.

TRIM Notices	Tax Year	Just	Land	Market Assessed	Capped Assessed	Exemptions	Classified Use	Taxable
	Current	5,514,752	5,514,742	5,514,752	4,830,683	0	0	4,830,683
2023 Values / Additional Info	2023	5,514,752	5,514,742	5,514,752	4,391,530	0	0	4,391,530
2022 Values / Additional Info	2022	9,025,407	5,853,910	9,025,407	3,992,300	0	0	3,992,300
2021 Values / Additional Info	2021	7,220,518	4,754,724	7,220,518	3,629,364	0	0	3,629,364
2020 Values / Additional Info	2020	3,299,422	1,874,576	3,299,422	3,299,422	0	0	3,299,422
2019 Values / Additional Info	2019	3,327,826	1,743,505	3,327,826	3,327,826	0	0	3,327,826
2018 Values / Additional Info	2018	3,970,743	2,150,031	3,970,743	3,970,743	0	0	3,970,743
2017 Values / Additional Info	2017	3,655,163	1,938,941	3,655,163	2,720,489	0	0	2,720,489
2016 Values	2016	3,654,679	1,949,760	3,654,679	2,468,012	0	0	2,468,012
2015 Values	2015	3,437,515	2,188,704	3,437,515	2,248,797	0	0	2,248,797
2014 Values	2014	2,888,382	1,640,319	2,888,382	2,044,361	0	0	2,044,361
2013 Values	2013	1,858,510	1,726,470	1,858,510	1,858,510	0	0	1,858,510
2012 Values	2012	1,902,111	1,726,470	1,902,111	1,902,111	0	0	1,902,111
2011 Values	2011	1,774,261	1,007,634	1,774,261	1,774,261	0	0	1,774,261

<u>2010 Values</u>	2010	1,920,805	1,318,828	1,920,805	1,920,805	0	0	1,920,805
	2009	2,879,030	2,092,200	2,879,030	2,879,030	0	0	2,879,030
	2008	4,060,640	3,382,010	4,060,640	4,060,640	0	0	4,060,640
	2007	3,670,580	3,057,160	0	3,670,580	0	0	3,670,580
	2006	1,933,060	1,614,280	0	1,933,060	0	0	1,933,060
	2005	1,924,510	1,539,100	0	1,924,510	0	0	1,924,510
	2004	1,916,040	1,412,580	0	1,916,040	0	0	1,916,040
	2003	1,808,830	1,333,560	0	1,808,830	0	0	1,808,830
	2002	1,755,600	1,203,670	0	1,755,600	0	0	1,755,600
	2001	1,749,460	1,203,670	0	1,749,460	0	0	1,749,460
	2000	1,647,950	1,202,070	0	1,647,950	0	0	1,647,950
	1999	1,645,080	1,202,070	0	1,645,080	0	0	1,645,080
	1998	1,448,790	1,202,070	0	1,448,790	0	0	1,448,790
	1997	1,453,860	1,202,070	0	1,453,860	0	0	1,453,860
	1996	1,452,590	1,203,780	0	1,452,590	0	0	1,452,590
	1995	1,404,540	1,205,480	0	1,404,540	0	0	1,404,540
	1994	1,377,310	1,207,180	0	1,377,310	0	0	1,377,310
	1993	1,343,830	1,208,890	0	1,343,830	0	0	1,343,830
	1992	1,289,000	1,210,590	0	1,289,000	0	0	1,289,000

The **Just** value is the total parcel assessment (less any considerations for the cost of sale). This is the closest value to *Fair Market Value* we produce and is dated as of January 1st of the tax year in question ([F.A.C. 12D-1.002](#)).

The **Land** value is the portion of the total parcel assessment attributed to the land.

The **Market Assessed** value is the total parcel assessment (less any considerations for the cost of sale) based upon the assessment standard. Most parcels are assessed based either upon the *Highest and Best Use* standard or the *Present Use* standard ([F.S. 193.011](#)). For *Agriculturally Classified* parcels (or parts thereof), only agricultural uses are considered in the assessment ([F.S. 193.461 \(6\)\(a\)](#)). The difference between the *Highest and Best Use/Present Use* and the *Agricultural Use* is often referred to as the *Agricultural Exemption*. (i.e. Market Assessed = Just - Agricultural Exemption)

The **Capped Assessed** value is the *Market Assessment* after any *Save Our Homes* or *10% Assessment Limitation* cap is applied. This assessment cap is applied to all properties and limits year-to-year assessment increases to either the *Consumer Price Index* or 3%, whichever is lower for *Homestead* properties OR 10% for non-*Homestead* properties.

The **Exemptions** value is the total amount of all exemptions on the parcel.

The **Taxable** value is the *Capped Assessment* after exemptions (*Homestead, etc.*) are applied to it. This is the value that most taxing authorities use to calculate a parcel's taxes. (i.e. Taxable = Capped Assessed - Exemptions)

Property Details (Current Working Values)

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Land

Land Tracts

Use Code	Use Code Description	Number of Units	Unit of Measure
1600	Shopping Center, Community	108987.00	Square Feet

Land Features

Description	Year Added	Units
BLACK TOP - IMPROVED	1976	56,770
FENCE - CHAIN LINK - 6 FOOT	2016	420

Buildings

Building 1 of 1

Building Characteristics

Improvement Type	Model Type	Stories	Living Units
38 - Shopping Center - Neighborhood	4 - COMMERCIAL	2.0	0
Bedrooms	Fixtures	Year Built	Effective Year Built
0	0.0	1976	1985

Building Subareas

Description	Heated / Under Air	Area (Sq Ft)
BAS - BASE	Y	11,363
FOP - FINISHED OPEN PORCH	N	3,038
FOP - FINISHED OPEN PORCH	N	2,330
FST - FINISHED UTILITY	N	282

Buildings

Building 1 of 1

Building Characteristics

Improvement Type	Model Type	Stories	Living Units
38 - Shopping Center - Neighborhood	4 - COMMERCIAL	2.0	0
Bedrooms	Fixtures	Year Built	Effective Year Built
0	0.0	1976	1985

Building Subareas

Description	Heated / Under Air	Area (Sq Ft)
BAS - BASE	Y	11,363
FOP - FINISHED OPEN PORCH	N	3,038
FOP - FINISHED OPEN PORCH	N	2,330
FST - FINISHED UTILITY	N	282
FST - FINISHED UTILITY	N	282
FUS - FINISHED UPPER STORY	Y	16,875
RSA - RESTAURANT - AVERAGE	Y	5,200
STP - STOOP	N	1,244
UOP - UNFINISHED OPEN PORCH	N	395

Building Features

Description	Year Added	Units
ELEVATOR - PASSENGER	1976	2

Building Front Photo

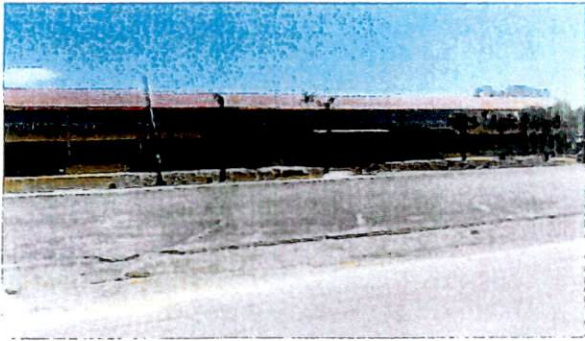
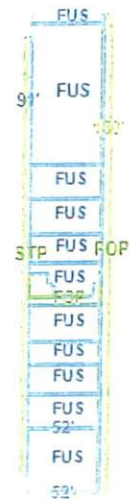


Photo Date: January of 2024

Building Footprint



Taxing Authorities

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TOWN OF FM BCH / FM BCH DOWNTOWN REDEV / 277

Name / Code	Category	Mailing Address
LEE CO GENERAL REVENUE / 044	County	LEE COUNTY OFFICE OF MGMT & BUDGET PO BOX 398 FORT MYERS FL 33902-0398
FORT MYERS BEACH FIRE CONTROL DIST / 032	Independent District	FORT MYERS BEACH FIRE CONTROL DIST 100 VOORHIS ST FORT MYERS BEACH FL 33931
FORT MYERS BEACH MOSQUITO CONTROL / 035	Independent District	FORT MYERS BEACH MOSQUITO CONTROL PO BOX 2837 FORT MYERS BEACH FL 33932-2837
FORT MYERS BEACH PUBLIC LIBRARY DIST / 033	Independent District	FORT MYERS BEACH PUBLIC LIBRARY DIST 2755 ESTERO BLVD FORT MYERS BEACH FL 33931
LEE CO HYACINTH CONTROL DIST / 051	Independent District	LEE CO HYACINTH CONTROL DIST 15191 HOMESTEAD RD LEHIGH ACRES FL 33971

WEST COAST INLAND NAVIGATION DIST / 098

Independent District

WEST COAST INLAND NAVIGATION DIST
200 MIAMI AVE E
VENICE FL 34285-2408

TOWN OF FORT MYERS BEACH FLORIDA / 118

Municipal

TOWN OF FORT MYERS BEACH
2523 ESTERO BLVD
FORT MYERS BEACH FL 33931

PUBLIC SCHOOL - BY LOCAL BOARD / 012

Public Schools

LEE COUNTY SCHOOL BOARD
BUDGET DEPARTMENT
2855 COLONIAL BLVD
FORT MYERS FL 33966

PUBLIC SCHOOL - BY STATE LAW / 013

Public Schools

LEE COUNTY SCHOOL BOARD
BUDGET DEPARTMENT
2855 COLONIAL BLVD
FORT MYERS FL 33966

SFWMD-DISTRICT-WIDE / 110

Water District

SFWMD
3301 GUN CLUB RD
WEST PALM BEACH FL 33406

SFWMD-EVERGLADES CONSTRUCTION PROJECT / 084

Water District

SFWMD
3301 GUN CLUB RD
WEST PALM BEACH FL 33406

SFWMD-OKEECHOBEE BASIN / 308

Water District

SFWMD
3301 GUN CLUB RD
WEST PALM BEACH FL 33406

Sales / Transactions

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Sale Price	Date	Clerk File Number	Type	Notes	Vacant/ Improved
3,990,000.00	03/01/2017	2017000045126	01		
0.00	11/01/1986	1885/2396	01		
1,529,000.00	11/01/1980	1468/1697	06		

[View Recorded Plat at LeeClerk.org](#)

Use the above link to do a search on the Lee County Clerk of Courts website, using **3** and **84** for the book and page numbers and **Plats Book** for the book type.

Help safeguard your home against property fraud. Sign up for the Lee Clerk's free [Property Fraud Alert](#).

Building / Construction Permit Data

Generated on 7/9/2024 7:41 AM

Permit Number	Permit Type	Date
241099	Electric	04/26/2024
240525	Plumbing	02/28/2024
234288	Building Remodel / Repair	10/11/2023
232764	Building Window / Door Replacement	04/24/2023
221098	Roof / Sheds	07/26/2022
211840	Electric	11/16/2021
210752	Site Development - Driveway / Sidewalks	05/25/2021
SGN18-0013	Building Miscellaneous	07/11/2018
MEC18-0239	AC New / Change out	06/06/2018

ELE18-0169	Electric	06/05/2018
PLB18-0110	Plumbing	06/05/2018
COM18-0129	Building Remodel / Repair	05/22/2018
ROF18-0061	Roof	02/22/2018
ELE17-0374	Electric	11/17/2017
PLB17-0239	Plumbing	10/24/2017
COM17-0033	Roof	07/31/2017
FNC16-0033	Fence	05/13/2016
MEC15-0034	AC New / Change out	02/12/2015
SGN14-0017	Building Miscellaneous	01/12/2015
MEC14-0171	AC New / Change out	06/17/2014
MEC14-0172	AC New / Change out	06/17/2014
MEC14-0128	AC New / Change out	05/27/2014
MEC13-0376	AC New / Change out	12/23/2013
PRK12-0011	Building Miscellaneous	12/21/2012
MEC12-0245	AC New / Change out	12/04/2012
ELE11-0170	Electric	10/10/2012
SGN 12-0036	Building Miscellaneous	08/10/2012
SGN12-0030	Building Miscellaneous	07/24/2012
ROF11-0070	Roof	09/20/2011
ROF11-0038	Roof	06/01/2011
COM10-0239	Building Remodel / Repair	12/20/2010
MEC10-0077	AC New / Change out	05/19/2010
FIR10-0008	Fire	03/26/2010
COM09-0190	Building Remodel / Repair	02/09/2010
ELE10-0006	Electric	01/12/2010
MEC09-0122	AC New / Change out	10/12/2009
COM09-0030	Building Remodel / Repair	05/20/2009
FNC09-0009	Fence	04/23/2009
COM09-0014	Building Remodel / Repair	02/24/2009
COM08-0008	Commercial	08/26/2008
DEM2005-00514	Demolition	11/04/2005
FNC2004-01068	Fence	06/30/2004
COM2001-01644	Commercial	11/21/2001
COM2001-00118	Building Remodel / Repair	03/15/2001
FNC2000-00097	Fence	04/12/2000
COM2000-00342	Commercial	03/08/2000
FNC199910262	Fence	09/30/1999
COM199606312	Building Addition	06/19/1996
COM199506061	Commercial	06/29/1995
199409089	Commercial	09/27/1994
COM199301891	Building Miscellaneous	03/01/1993
115019	Commercial	09/21/1992
199009701	Commercial	09/24/1990
COM199009480	Building Miscellaneous	09/17/1990
199002859	Commercial	03/07/1990
811497	Commercial	10/12/1988
715117	Commercial	12/16/1987
611839	Commercial	11/19/1986
112799	Commercial	10/18/1986
77499	Residential	03/20/1981

IMPORTANT: THIS MAY NOT BE A COMPREHENSIVE OR TIMELY LISTING OF PERMITS ISSUED FOR THIS PROPERTY.

Note: The Lee County Property Appraiser's Office does not issue or maintain any permit information. The Building / Construction permit data displayed here represents only those records this Office may find necessary to conduct Property Appraiser business. Use of this information is with the understanding that in no way is this to be considered a comprehensive listing of permits for this or any other parcel.

The Date field represents the date the property appraiser received information regarding permit activity; it may or not represent the actual date of permit issuance or completion.

Full, accurate, active and valid permit information for parcels can only be obtained from the [appropriate permit issuing agency](#).

Parcel Numbering History ⓘ

Generated on 7/9/2024 7:41 AM

Prior STRAP	Prior Folio ID	Renumber Reason	Renumber Date
19-46-24-04-00002.0010	N/A	Reserved for Renumber ONLY	01/12/1995

Solid Waste (Garbage) Roll Data

Generated on 7/9/2024 7:41 AM

Solid Waste District	Roll Type	Category	Unit / Area	Tax Amount
001 - Service Area 1	C - Commercial Category	C	36054	1,039.10

Garbage	Recycling	Horticulture
Thursday	Thursday	Thursday

Flood and Storm Information

Generated on 7/9/2024 7:41 AM

Community	Flood Insurance Panel	Find my flood zone Version	Date	Evacuation Zone
071C	0554	G	11/17/2022	A

Generated on 7/9/2024 7:41 AM

After Recording Return To:
Mandy Schutt FRP
Schutt Law Firm, P.A.
12601 New brittany Blvd.
Fort Myers, FL 33907

This Instrument Prepared by:
Mandy Schutt FRP
Schutt Law Firm, P.A.
12601 New Brittany Blvd.
Fort Myers, FL 33907

as a necessary incident to the fulfillment of conditions
contained in a title insurance commitment issued by it.

Property Appraisers Parcel I.D. (Folio) Number(s):
19-46-24-W4-00402.0010
File No.: 1610020

WARRANTY DEED

This Warranty Deed, made the 1st day of March, 2017, by **Beate Rotermund, Inc., a Florida Corporation**, hereinafter called the grantor, whose post office address is: 3333 Renaissance Blvd., Suite 213, Bonita Springs, FL 34134, to **Key Estero Shops, LLC, a Michigan Limited Liability Company**, whose post office address is: 3220 Pine Cone Court, Milford, MI 48381, hereinafter called the grantee,

WITNESSETH: That said grantor, for and in consideration of the sum of \$3,990,000.00 Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Lee County, Florida, to wit:

A tract or parcel of land lying in Lot 11, T.P. HILL'S SUBDIVISION, as recorded in Plat Book 3 at page 84, of the Public Records of Lee County, Florida, described as follows:

BEGIN at a concrete monument marking the Southeast corner of said Lot 11; thence run N 68° 52' 30" W. along the Northerly R/W of Estero Boulevard, a distance of 274.39' to the Easterly R/W of Carolina Ave.; thence run N 1° 00' E. along said Easterly R/W, a distance of 652.21'; thence run S 89° 16' E., a distance of 254.16' to the Easterly line of said Lot 11, thence run S 0° 44' W., a distance of 747.81' to the Point of Beginning.

LESS AND EXCEPT the North 275 feet as described in Official Record Book 1781 at Page 3018.

The property is not the homestead of the Grantor(s).

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to 2016, reservations, restrictions and easements of record, if any.

(The terms "grantor" and "grantee" herein shall be construed to include all genders and singular or plural as the context indicates.)

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal the day and year first above written.

SIGNED IN THE PRESENCE OF THE FOLLOWING WITNESSES
TWO SEPARATE DISINTERESTED WITNESSES REQUIRED

Witness Signature: [Signature]
Printed Name: DARIN L. SCHUTT

Witness Signature: [Signature]
Printed Name: Gronne M. Lucas

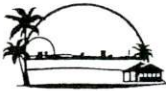
BEATE ROTERMUND, INC.
[Signature]
Ulrich Rotermund
President

State of Florida
County of Lee

The foregoing instrument was acknowledged before me this 1st day of March, 2017 by Ulrich Rotermund as President of Beate Rotermund, Inc., a Florida Corporation on behalf of said entity. He is personally known to me or has produced German Passport as identification.

My Commission Expires: [Signature]
Notary Public Signature
Printed Name: Nichole L. Grimes
Serial Number





Lee County Tax Collector

Noelle Branning

2023 Paid Real Estate Tax Notice

Ad Valorem Taxes and Non-ad Valorem Assessments for Lee County, Florida

Account Number:
19-46-24-W4-00402.0010
Alternate Key:
2100387332
Millage Code:
277

Site Address / Legal Description:
1661 ESTERO BLVD
HILLS T P SUBD PB 3 PG 84 PT LT 11 DESC
OR 1468 PG 1697 LESS N 275 FT

Exemptions/Values:
Assessed Value 5,514,752

* See message below

KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381

Paid 11/21/2023 DP-00-01758352 \$65,058.64

Ad Valorem Taxes Levying Authority	Telephone	Mill Rate	Assessed	Exemption	Taxable	Amount
LEE COUNTY GENERAL REVENUE	239-533-2221	3.7623	4,391,530	0	4,391,530	16,522.25
PUBLIC SCHOOL - BY LOCAL BOARD	239-337-8215	2.2480	5,514,752	0	5,514,752	12,397.16
PUBLIC SCHOOL - BY STATE LAW	239-337-8215	3.1820	5,514,752	0	5,514,752	17,547.94
TOWN OF FORT MYERS BEACH	239-765-0202	0.9900	4,391,530	0	4,391,530	4,347.61
SFL WATER MGMT-DISTRICT LEVY	561-686-8800	0.0948	4,391,530	0	4,391,530	416.32
SFL WATER MGMT-EVERGLADE CONST	561-686-8800	0.0327	4,391,530	0	4,391,530	143.60
SFL WATER MGMT-OKEECHOBEE LEVY	561-686-8800	0.1026	4,391,530	0	4,391,530	450.57
FORT MYERS BEACH FIRE CONTROL DISTRICT	239-590-4200	2.9851	4,391,530	0	4,391,530	13,109.16
FORT MYERS BEACH MOSQUITO	239-463-6350	0.1123	4,391,530	0	4,391,530	493.17
FORT MYERS BEACH LIBRARY	239-463-9691	0.2355	4,391,530	0	4,391,530	1,034.21
LEE COUNTY HYACINTH CONTROL	239-694-2174	0.0217	4,391,530	0	4,391,530	95.30
WEST COAST INLAND NAVIGATION DISTRICT	941-485-9402	0.0394	4,391,530	0	4,391,530	173.03

Non-Ad Valorem Assessments Levying Authority	Telephone	Rate	Amount
LEE COUNTY SOLID WASTE ASSESSMENT	239-533-8000		1,039.10

2023 Combined Total Ad Valorem and Non-Ad Valorem: \$67,769.42

2023 Paid Real Estate

Tax Notice

Account: 19-46-24-W4-00402.0010
Site Address: 1661 ESTERO BLVD,
FORT MYERS BEACH,
33931
Alternate Key: 2100387332

PAY ONLY ONE AMOUNT

If Received By: Amount Due:
Nov 30, 2023 \$0.00

Phone/Email Contact: _____

For payment options and instructions, refer to the back of this notice.

* If the address below is not correct, visit LeePA.org to update your address.
KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381

Make check payable to:
LEE COUNTY TAX COLLECTOR
PO BOX 1609
FORT MYERS FL 33902-1609

Paid 11/21/2023 DP-00-01758352 \$65,058.64

Return with payment



IMPORTANT INSTRUCTIONS AND INFORMATION - PLEASE READ

Ad Valorem Taxes cover the period January 1 through December 31 of the tax year indicated on the front of this notice. Tax notices are mailed on or about November 1 and become delinquent April 1. Failure to receive a tax notice does not extend discounts or excuse taxpayers' responsibilities to pay taxes and applicable penalties for late payments. Installment tax notices are mailed in June, September, December and March. Installment payment discounts are: June (6%), September (4.5%) and December (3%).

Governmental Office Responsibilities



Lee County Tax Collector

The Tax Collector prints, mails, and collects payments based on the tax rolls certified by the Property Appraiser and Levying Authorities.

Contact the Tax Collector to:

- Pay your current or delinquent property taxes
- Learn about Partial Payment, Installment Payment, and Homestead Tax Deferral plans
- Print your tax bills and receipts

Phone: 239-533-6000 • Website: LeeTC.com



Lee County Property Appraiser

The Property Appraiser values properties and prepares and certifies the tax roll which includes assessed values, exemptions, legal description, assessed owner(s) name and mailing address.

Contact the Property Appraiser to:

- Ask questions about the assessed value or exemption of your property
- Change your mailing address
- File or check on Homestead and other exemptions

Phone: 239-533-6100 • Website: LeePA.org



Lee County Levying Authorities

Lee County Levying Authorities establish millage rates and assessments based on revenue needed for operating expenses.

Call your Levying Authority with direct questions regarding services provided or rates charged.

A list of Levying Authorities and phone numbers may appear on the front of this notice or can be found on your property tax bill.

Visit LeeTC.com/property-taxes for instructions on viewing your bill.

Discounts

The amounts indicated on the front of this notice represent the total taxes and assessments due (if applicable) less discounts allowed for early payment.

When the discount period ends on a weekend or holiday, the discount is extended to the next business day. Taxes are due by March 31 of each year.

4% if paid in **NOVEMBER**

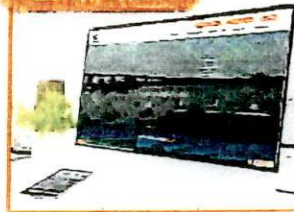
3% if paid in **DECEMBER**

2% if paid in **JANUARY**

1% if paid in **FEBRUARY**

Payment Options

PAY ONLINE



Visit LeeTC.com

Other ways to pay:

Mail: Check or money order.

Phone: 239.533.6000.

In Person: Cash, check, money order, debit card (PIN required), and all major credit cards.

Note: A convenience fee is charged when using a credit or debit card and is subject to service provider rates which may vary. No portion of this fee is retained by the Tax Collector's office.

Note: If using your bank's online bill pay, make sure you allow for processing time so payment arrives by the received date listed on the front of this notice.

Delinquent Taxes

Payment of delinquent taxes must be made in certified U.S. funds drawn on a U.S. bank. The amount due is determined by the date payment is received. Failure to pay delinquent taxes could result in the loss of your property. On April 1 the following charges are imposed by Florida Law:

Real Estate: 3% minimum interest and advertising costs. A tax certificate sale is held on or before June 1 resulting in additional charges.

Tangible Personal Property: 18% interest annually, cost of advertising, and fees. Tax warrants will be issued on all unpaid personal property taxes on or about June 1.

Confirm Payment

Confirm receipt of your payment online at our official website LeeTC.com. Your taxes are not considered paid until your payment clears our bank and is applied to your tax account.

Have you met Edison?

Edison is our automated chatbot that can answer many of your questions relating to property taxes and much more. Available 24/7, you can find Edison at the bottom of our website, LeeTC.com.



Property Sold: forward this notice to the new owner(s).

NOTICE: Pursuant to Florida Statute 590.125(5), be advised that the Florida Forest Service may be performing prescribed burning and/or other treatments in a project area that includes your property in Lee County, Florida. These efforts are to reduce fuel loads and threat of wildfires. These projects are planned to occur from the date of this notice until the same date the following year. This service is provided at no cost to the affected landowner(s). Contact the Florida Forest Service if you have questions regarding this service at: 10941 Palm Beach Blvd., Fort Myers, FL 33905, or 239.690.8001.

Our Mission: Deliver 5-Star service quickly and efficiently through an organizational culture that values customers, team, and community.

LARA Corporations Online Filing System

Department of Licensing and Regulatory Affairs

ID Number: 802064001[Request certificate](#)[Return to Results](#)[New search](#)**Summary for:** KEY ESTERO SHOPS, LLC**The name of the DOMESTIC LIMITED LIABILITY COMPANY:** KEY ESTERO SHOPS, LLC**Entity type:** DOMESTIC LIMITED LIABILITY COMPANY**Identification Number:** 802064001 **Old ID Number:** F0906R**Date of Organization in Michigan:** 01/18/2017**Purpose:** All Purpose Clause**Term:** Perpetual**The name and address of the Resident Agent:**

Resident Agent Name: LORA NACCARATO

Street Address: 3220 PINE CONE CT

Apt/Suite/Other:

City: MILFORD

State: MI

Zip Code: 48381

Registered Office Mailing address:

P.O. Box or Street Address:

Apt/Suite/Other:

City:

State:

Zip Code:

Act Formed Under: 023-1993 Michigan Limited Liability Company Act**Managed By:**

Members

View filings for this business entity:

ALL FILINGS
ANNUAL REPORT/ANNUAL STATEMENTS
CERTIFICATE OF CORRECTION
CERTIFICATE OF CHANGE OF REGISTERED OFFICE AND/OR RESIDENT AGENT
RESIGNATION OF RESIDENT AGENT
CERTIFICATE OF ASSUMED NAME

[View filings](#)**Comments or notes associated with this business entity:**

[LARA FOIA Process](#) [Transparency](#) [State Web Sites](#)

[Michigan.gov Home](#) [ADA](#) [Michigan News](#) [Policies](#)

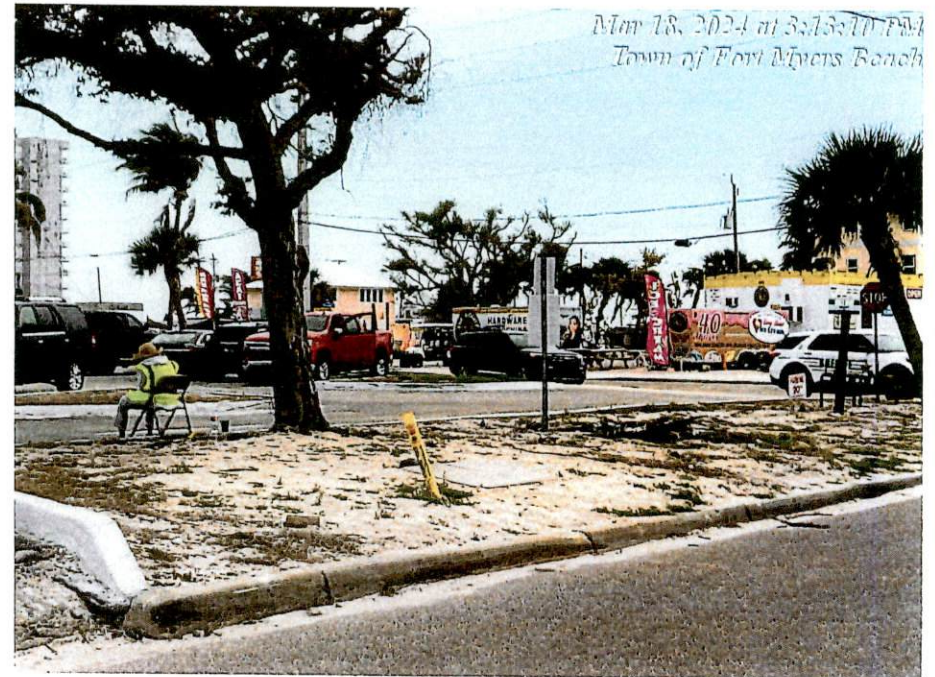
Copyright 2024 State of Michigan

EXHIBIT B

Mar 18, 2024 at 3:12:15 PM
Town of Fort Myers Beach



Mar 18, 2024 at 3:13:10 PM
Town of Fort Myers Beach



Mar 18, 2024 at 3:13:28 PM
Town of Fort Myers Beach



Mar 18, 2024 at 3:13:03 PM
Town of Fort Myers Beach



EXHIBIT C



Town of Fort Myers Beach

CODE COMPLIANCE

2731 Oak Street Fort Myers Beach, FL 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

March 21, 2024

CASE NUMBER:	20240249
CERTIFIED MAIL:	9589071052700183636796

KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381

SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **03/18/2024** by Town of Fort Myers Beach Code Enforcement Officer **D. Batt** indicates that the property is in violation of the following Town Code(s):

34-3203: For the operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit.

Sec. 34-3203. - Illegal buildings, uses and lots. "If a building, use, or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses or lots.

(1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c) of this chapter.

(2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations.

The Violation(s) can be brought into compliance by 04/27/2024. Please contact Permitting Dept. and acquire the required Use permit. #(239)220-6955 You are hereby directed to bring these violations into compliance within 30 days of receipt of this notice.

ONCE THIS VIOLATION(S) IS IN COMPLIANCE, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED TO VERIFY THAT THE VIOLATION(S) HAS BEEN 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 brought into compliance 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) 765-0202 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

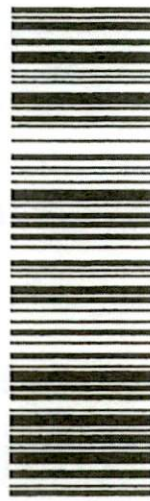
Respectfully,

D. Batt

Code Enforcement Officer
Town of Fort Myers Beach

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®



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9589 0710 5270 0183 6367 96

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	
\$	
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postmark
Here

Postage	
\$	
Total Postage and Fees	
\$	

Sent To		
Key Estero Shop LLC		20240249
Street and Apt. No., or PO Box No.		
3220 Pine Cone Ct		1661 Estero
City, State, ZIP+4®		
Milford, MI 48381		

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Key Estero Shops LLC
3220 Pine Cone Ct
Milford, MI 48381



9590 9402 8344 3094 9299 00

2. Article Number (Transfer from service label)

9589 0710 5270 0183 6367 96

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature		☐ Agent
X		☐ Addressee
B. Received by (Printed Name)	C. Date of Delivery	

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

20240249 1661 Estero Blvd

3. Service Type		☐ Priority Mail Express®
☐ Adult Signature	☐ Registered Mail™	
☐ Adult Signature Restricted Delivery	☐ Registered Mail Restricted Delivery	
☐ Certified Mail®	☐ Signature Confirmation™	
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation Restricted Delivery	
☐ Collect on Delivery	☐ Insured Mail	
☐ Collect on Delivery Restricted Delivery	☐ Registered Mail Restricted Delivery	
☐ Insured Mail	☐ Registered Mail Restricted Delivery	
☐ Registered Mail Restricted Delivery	☐ Registered Mail Restricted Delivery	

Domestic Return Receipt



Town of Fort Myers Beach

CODE COMPLIANCE

2731 Oak Street Fort Myers Beach, FL 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

March 21, 2024

CASE NUMBER:	20240249
CERTIFIED MAIL:	9589071052700183636789

Other responsible party:
Registered agent: Lora Naccarato
3220 Pine Cone Ct
Milford, MI 49381

SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010

NOTICE OF VIOLATION

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(1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c) of this chapter.

(2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations.

"

The Violation(s) can be brought into compliance by 04/27/2024. Please contact Permitting Dept. and acquire the required Use permit. #(239)220-6955 You are hereby directed to bring these violations into compliance within 30 days of receipt of this notice.

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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

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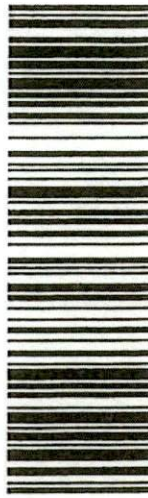
Respectfully,

D. Batt

Code Enforcement Officer
Town of Fort Myers Beach

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®



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9589 0710 5270 0183 6367 89

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage	\$
Total Postage and Fees	\$

Sent To Lora Naccarato

Street and Apt. No., or PO Box No. 3320 Pine Cone Ct

City, State, ZIP+4® Milford, MI 49381

Postmark
Here

20240249

Nov Agent

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lora Naccarato
3320 Pine Cone Ct
Milford, MI 49381



9590 9402 8344 3094 9298 94

2. Article Number (Transfer from service label)

9589 0710 5270 0183 6367 89

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1?** ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |

Insured Mail
Insured Mail Restricted Delivery
(over \$500)

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt



Town of Fort Myers Beach

CODE COMPLIANCE

2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

March 21, 2024

CASE NUMBER:	20240249
CERTIFIED MAIL:	9589071052700183636772

Key Estero Shops LLC
1661 Estero Blvd
Fort Myers Beach, FL 33931

SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010

NOTICE OF VIOLATION

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Respectfully,

D. Batt

Code Enforcement Officer
Town of Fort Myers Beach

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®



9589 0710 5270 0183 6367 72
9589 0710 5270 0183 6367 72

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OFFICIAL USE

Certified Mail Fee	
\$	
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	
\$	
Total Postage and Fees	
\$	Key Estero

Postmark
Here

Sent To Key Estero Shops 1661 Estero
 Street and Apt. No., or PO Box No. 1661 Estero Blvd
 City, State, ZIP+4® Ft Myers Beach, FL 33931 Nov 2024
 PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Key Estero Shops LLC
 1661 Estero Blvd
 Ft Myers Beach, FL 33931



9590 9402 8344 3094 9298 87

2. Article Number (Transfer from service label)

9589 0710 5270 0183 6367 72

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature		☐ Agent
X		☐ Addressee
B. Received by (Printed Name)	C. Date of Delivery	
D. Is delivery address different from item 1? ☐ Yes		
If YES, enter delivery address below: ☐ No		

30240249 1661 Estero Prop.

3. Service Type		☐ Priority Mail Express®
☐ Adult Signature		☐ Registered Mail™
☐ Adult Signature Restricted Delivery		☐ Registered Mail Restricted Delivery
☐ Certified Mail®		☐ Signature Confirmation™
☐ Certified Mail Restricted Delivery		☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery		
☐ Collect on Delivery Restricted Delivery		
☐ Insured Mail		
☐ Registered Mail Restricted Delivery (over \$500)		

Domestic Return Receipt

9589 0710 5270 0183 6367 89

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

Milford, MI 48381

OFFICIAL USE

Certified Mail Fee \$4.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$0.92

Total Postage and Fees \$5.32

Sent To
Lora Naccarato 20240249
Street and Apt. No., or PO Box No.
3220 Pine Cone Ct 1661 Estero
City, State, ZIP+4®
Milford, MI 48381 Nov Agent

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

9589 0710 5270 0183 6367 96

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

Milford, MI 48381

OFFICIAL USE

Certified Mail Fee \$4.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$0.92

Total Postage and Fees \$5.32

Sent To
Key Estero Shop LLC
Street and Apt. No., or PO Box No.
3220 Pine Cone Ct 1661 Estero
City, State, ZIP+4®
Milford, MI 48381

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

9589 0710 5270 0183 6367 72

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

Fort Myers Beach, FL 33931

OFFICIAL USE

Certified Mail Fee \$4.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$0.92

Total Postage and Fees \$5.32

Sent To
Key Estero Shops 1661 Estero
Street and Apt. No., or PO Box No.
1661 Estero Blvd 20240249
City, State, ZIP+4®
Fort Myers Beach, FL 33931 Nov Agent

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions



FORT MYERS BEACH • ESTERO ISLAND

2525 Estero Boulevard
Fort Myers Beach, FL 33931

CERTIFIED MAIL



9589 0710 5270 0183 6367 72

Retail



RDC 99



33931

U.S. POSTAGE PAID
FCM LETTER
FORT MYERS BEACH
FL 33931
MAR 21, 2024

\$8.97

R2308M153989-03

Town of Fort Myers Beach

MAY 8 2024

Received by: _____

Key Estero Shops LLC

11661 Estero Blvd

Fort Myers Beach FL 33931

NIXIE

339 DE 1

0005/03/24

RETURN TO SENDER
INSUFFICIENT ADDRESS
UNABLE TO FORWARD

33931335425

BC: 33931335425

*0701-03206-21-42



Mar 21, 2024 at 2:59:45 P
Town of Fort Myers Bea



March 21, 2024

Key Estero Slope LLC
1641 Estero Blvd
Fort Myers Beach, FL 33931

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on 03/19/2024 by the Town of Fort Myers Beach Code Enforcement Officer D. Butt indicates that the property is in violation of the following Town Code(s):

34-2203: For the operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit.

Sec. 34-2203 - Shared buildings, yards and lots: "If a building, yard, or lot was not lawfully occupied and cannot be lawfully occupied in compliance with this code, it shall not be considered nonconforming, but shall be deemed an illegal building, yard, or lot and shall not otherwise be protected by this code or nonconforming building, yard or lot."

(1) Shared buildings or lots must be lawfully occupied in compliance with this code or must be removed in accordance with § 34-2203 of this chapter.

(2) Shared lots must be lawfully occupied with existing land use as to conform with this code, or must comply with the code and be determined in accordance with the property maintenance code or other applicable code of this code and other local regulations.

The Violation(s) can be brought into compliance by 04/27/2024. Please contact Planning Dept. and acquire the required Use Permit: 80336120-0005. You are hereby directed to bring these violations into compliance within 30 days of receipt of this notice.

ONCE THIS VIOLATION(S) IS IN COMPLIANCE, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED TO VERIFY THAT THE VIOLATION(S) HAS BEEN 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 brought into compliance and reoccurs, the fines may be scheduled for hearing before the Town of Fort Myers Beach Ordinance Magistrate. The Ordinance Magistrate has, in their discretion, the authority to issue a hearing and seek a finding of a violation by the Ordinance Magistrate upon a finding that 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 you are scheduled, please be aware that under Florida Statutes, Chapter 122 and 123, the Town of Fort Myers Beach Ordinance Magistrate has the authority to impose fines of up to \$500.00 per day for a repeat violation. The Ordinance Magistrate may also have the authority to issue a citation for a violation by the Ordinance Magistrate. If the Ordinance Magistrate finds a violation, the Ordinance Magistrate may impose a fine of up to \$500.00 per day for a repeat violation.



Town of Fort Myers Beach

POSTING AFFIDAVIT FOR TOWN HALL
2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

Code Enforcement Case #: 20240249

Respondent: Key Estero Shops, LLC

Violation Address: 1661 Estero Blvd.

STRAP #: 19-46-24-W4-00402.0010

I, Officer D. Batt, hereby state that the Notice of Violation was posted at Town Hall Fort Myers Beach, FL on the 21st day of March, 2024.

[Signature]
Signature

STATE OF FLORIDA COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 9th day of July, 2024, by D. Batt, ☒ who is personally known to me OR ☐ who has produced _____ as identification.

[Signature]
(SEAL) Notary Public Signature

My Commission Expires:

April 14, 2026



ASHLEY SHEPARD
Commission # HH 253125
Expires April 14, 2026

EXHIBIT D


[FMBgov.com](https://www.fmbgov.com)

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

07/09/2024

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

KEY ESTERO SHOPS LLC

Respondent.

Case Number:	20240249
Certified Mail:	70222410000084691901
Regular Mail:	

Site Address: **1661 ESTERO BLVD**
 Parcel Strap No.: **194624W4004020010**

AFFIDAVIT OF NON-COMPLIANCE

STATE OF FLORIDA)

COUNTY OF LEE)

BEFORE ME, the undersigned authority, personally appeared Officer D. Batt, Code Enforcement Officer for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. I, D. Batt, am a person authorized by law to inspect violations of the Town of Fort Myers Beach Code contained herein and the statements set forth herein are based upon personal knowledge.

2. On 03/18/2024, KEY ESTERO SHOPS LLC (property owner) was observed in violation of 34-3203 of the Town of Fort Myers Beach Code of Ordinances, For the operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit. , at the property located at 1661 ESTERO BLVD, Fort Myers Beach, FL 33931 ("Subject Property").

3. A Notice of Violation was issued on 03/21/2024, and sent certified mail to the address of record, 3220 PINE CONE CT, MILFORD, MI 48381, posted to the violation property located at 1661 ESTERO BLVD, Fort Myers Beach, FL 33931, and posted to Town Hall located at 2731 Oak St., Fort Myers Beach, FL 33931.

4. Exhibit A which is attached to this affidavit includes:

- A copy of the Lee County Appraiser Property Data
- A copy of the current Lee County Tax Collector bill
- A copy of the Notice of Violation issued on 03/21/2024
- A copy of the Domestic Return Receipt for the certified mail received on 03/21/2024 by the Town of Fort Myers Beach
- Pictures of the violation as observed on 03/18/2024
- Property Warranty Deed recorded 03/02/2017
- Pictures of the violation as observed on 07/08/2024

5. KEY ESTERO SHOPS LLC was/were given 30 to come into compliance with the Town of Fort Myers Beach Ordinance, which was on or before 04/27/2024.

6. I performed an inspection of the Subject Property on 07/08/2024, and the Subject Property remains in violation with the Town of Fort Myers Beach Ordinance. There does not appear to be any progress made towards compliance at 1661 ESTERO BLVD, Fort Myers Beach, FL 33931.

7. I have attached Exhibit B, which are photographs of the Subject Property, which I personally took, and which fairly represent the violation on the Subject Property I personally observed on 07/08/2024. These photographs have not been altered in any way.

8. I have personal knowledge of all these facts, and each is true to the best of my knowledge and belief.

9. The Town of Fort Myers Beach hereby has requested a hearing before the Special Magistrate and that an order be issued affording the appropriate relief, including an order to correct the above listed violation(s) and/or the imposition of an administrative fine not to exceed \$250.00 for each day each violation continues past the date for compliance or \$500.00 for each day each violation was repeated, and for such other and further relief as is consistent with the powers of the Special Magistrate.

FURTHER AFFIANT SAYETH NAUGHT.

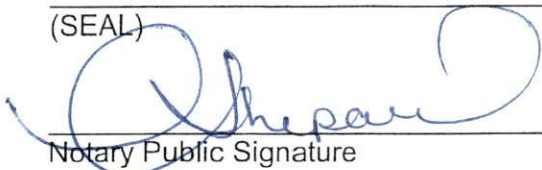


Signature of Affiant

STATE OF FLORIDA COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 8th day of July, 2024, by D. Batt, ☒ who is personally known to me OR ☐ who has produced _____ as identification.

(SEAL)



Notary Public Signature



ASHLEY SHEPARD
Commission # HH 253125
Expires April 14, 2026

My Commission Expires: April 14, 2026



Property Data

STRAP: 19-46-24-W4-00402.0010 Folio ID: 10227974

[Hurricane Ian Tax Roll Value Letter](#)

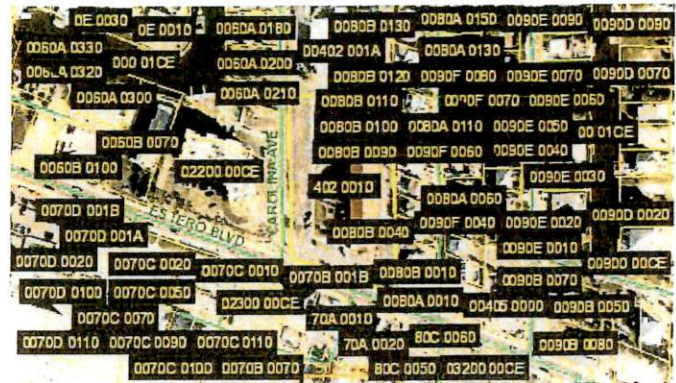
[Tax Refund Status](#)

Generated on 7/9/2024 7:41 AM

Owner Of Record - Sole Owner [\[Change Mailing Address\]](#)

KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD MI 48381

[\[Tax Map Viewer\]](#) [\[View Comparables\]](#)



Site Address

Site Address maintained by E911 Program Addressing

1661 ESTERO BLVD
FORT MYERS BEACH FL 33931

Property Description

Do not use for legal documents!

HILLS T P SUBD PB 3 PG 84 PT LT 11 DESC OR 1468 PG 1697
LESS N 275 FT

[View Recorded Plat at LeeClerk.org](#) - Use this link to do an Official Records search on the Lee County Clerk of Courts website, using 3 and 84 for the book and page numbers.

Attributes and Location Details

Total Bedrooms / Fixtures	0 / 78
Gross Building Area	33,438
1st Year Building on Tax Roll	1976
Historic Designation	No

Township	Range	Section	Block	Lot
46	24E	19	00402	0010
Municipality	Latitude	Longitude		
Town of Fort Myers Beach	26.45151	-81.94921		

[\[Pictometry Aerial Viewer\]](#)

Image of Structure



◀ Photo Date January of 2024 ▶ ☐ View other photos

[View Parcel on Google Maps](#)

Last Inspection Date: 01/31/2024

Property Values / Exemptions / TRIM Notices

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No existing exemptions found for this property.

TRIM Notices	Tax Year	Just	Land	Market Assessed	Capped Assessed	Exemptions	Classified Use	Taxable
	Current	5,514,752	5,514,742	5,514,752	4,830,683	0	0	4,830,683
2023 Values / Additional Info	2023	5,514,752	5,514,742	5,514,752	4,391,530	0	0	4,391,530
2022 Values / Additional Info	2022	9,025,407	5,853,910	9,025,407	3,992,300	0	0	3,992,300
2021 Values / Additional Info	2021	7,220,518	4,754,724	7,220,518	3,629,364	0	0	3,629,364
2020 Values / Additional Info	2020	3,299,422	1,874,576	3,299,422	3,299,422	0	0	3,299,422
2019 Values / Additional Info	2019	3,327,826	1,743,505	3,327,826	3,327,826	0	0	3,327,826
2018 Values / Additional Info	2018	3,970,743	2,150,031	3,970,743	3,970,743	0	0	3,970,743
2017 Values / Additional Info	2017	3,655,163	1,938,941	3,655,163	2,720,489	0	0	2,720,489
2016 Values	2016	3,654,679	1,949,760	3,654,679	2,468,012	0	0	2,468,012
2015 Values	2015	3,437,515	2,188,704	3,437,515	2,248,797	0	0	2,248,797
2014 Values	2014	2,888,382	1,640,319	2,888,382	2,044,361	0	0	2,044,361
2013 Values	2013	1,858,510	1,726,470	1,858,510	1,858,510	0	0	1,858,510
2012 Values	2012	1,902,111	1,726,470	1,902,111	1,902,111	0	0	1,902,111
2011 Values	2011	1,774,261	1,007,634	1,774,261	1,774,261	0	0	1,774,261

2010 Values	2010	1,920,805	1,318,828	1,920,805	1,920,805	0	0	1,920,805
	2009	2,879,030	2,092,200	2,879,030	2,879,030	0	0	2,879,030
	2008	4,060,640	3,382,010	4,060,640	4,060,640	0	0	4,060,640
	2007	3,670,580	3,057,160	0	3,670,580	0	0	3,670,580
	2006	1,933,060	1,614,280	0	1,933,060	0	0	1,933,060
	2005	1,924,510	1,539,100	0	1,924,510	0	0	1,924,510
	2004	1,916,040	1,412,580	0	1,916,040	0	0	1,916,040
	2003	1,808,830	1,333,560	0	1,808,830	0	0	1,808,830
	2002	1,755,600	1,203,670	0	1,755,600	0	0	1,755,600
	2001	1,749,460	1,203,670	0	1,749,460	0	0	1,749,460
	2000	1,647,950	1,202,070	0	1,647,950	0	0	1,647,950
	1999	1,645,080	1,202,070	0	1,645,080	0	0	1,645,080
	1998	1,448,790	1,202,070	0	1,448,790	0	0	1,448,790
	1997	1,453,860	1,202,070	0	1,453,860	0	0	1,453,860
	1996	1,452,590	1,203,780	0	1,452,590	0	0	1,452,590
	1995	1,404,540	1,205,480	0	1,404,540	0	0	1,404,540
	1994	1,377,310	1,207,180	0	1,377,310	0	0	1,377,310
	1993	1,343,830	1,208,890	0	1,343,830	0	0	1,343,830
	1992	1,289,000	1,210,590	0	1,289,000	0	0	1,289,000

The **Just** value is the total parcel assessment (less any considerations for the cost of sale). This is the closest value to *Fair Market Value* we produce and is dated as of January 1st of the tax year in question ([F.A.C. 12D-1.002](#)).

The **Land** value is the portion of the total parcel assessment attributed to the land.

The **Market Assessed** value is the total parcel assessment (less any considerations for the cost of sale) based upon the assessment standard. Most parcels are assessed based either upon the *Highest and Best Use* standard or the *Present Use* standard ([F.S. 193.011](#)). For *Agriculturally Classified* parcels (or parts thereof), only agricultural uses are considered in the assessment ([F.S. 193.461\(6\)\(a\)](#)). The difference between the *Highest and Best Use/Present Use* and the *Agricultural Use* is often referred to as the *Agricultural Exemption*.
(i.e. Market Assessed = Just - Agricultural Exemption)

The **Capped Assessed** value is the *Market Assessment* after any *Save Our Homes* or *10% Assessment Limitation* cap is applied. This assessment cap is applied to all properties and limits year-to-year assessment increases to either the *Consumer Price Index* or 3%, whichever is lower for Homestead properties OR 10% for non-Homestead properties.

The **Exemptions** value is the total amount of all exemptions on the parcel.

The **Taxable** value is the *Capped Assessment* after exemptions (*Homestead, etc.*) are applied to it. This is the value that most taxing authorities use to calculate a parcel's taxes.
(i.e. Taxable = Capped Assessed - Exemptions)

Property Details (Current Working Values)

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Land

Land Tracts

Use Code	Use Code Description	Number of Units	Unit of Measure
1600	Shopping Center, Community	108987.00	Square Feet

Land Features

Description	Year Added	Units
BLACK TOP - IMPROVED	1976	56,770
FENCE - CHAIN LINK - 6 FOOT	2016	420

Buildings

Building 1 of 1

Building Characteristics

Improvement Type	Model Type	Stories	Living Units
38 - Shopping Center - Neighborhood	4 - COMMERCIAL	2.0	0
Bedrooms	Fixtures	Year Built	Effective Year Built
0	0.0	1976	1985

Building Subareas

Description	Heated / Under Air	Area (Sq Ft)
BAS - BASE	Y	11,363
FOP - FINISHED OPEN PORCH	N	3,038
FOP - FINISHED OPEN PORCH	N	2,330
FST - FINISHED UTILITY	N	282

FST - FINISHED UTILITY
 FUS - FINISHED UPPER STORY
 RSA - RESTAURANT - AVERAGE
 STP - STOOP
 UOP - UNFINISHED OPEN PORCH

N	282
Y	16,875
Y	5,200
N	1,244
N	395

Building Features

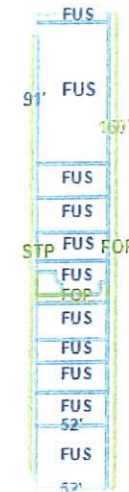
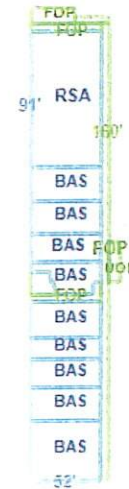
Description	Year Added	Units
ELEVATOR - PASSENGER	1976	2

Building Front Photo



Photo Date: January of 2024

Building Footprint



Property Details (2023 Tax Roll)

Generated on 7/9/2024 7:41 AM

Land

Land Tracts

Use Code	Use Code Description	Number of Units	Unit of Measure
1600	Shopping Center, Community	108987.00	Square Feet

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FST - FINISHED UTILITY	N	282
FST - FINISHED UTILITY	N	282
FUS - FINISHED UPPER STORY	Y	16,875
RSA - RESTAURANT - AVERAGE	Y	5,200
STP - STOOP	N	1,244
UOP - UNFINISHED OPEN PORCH	N	395

Building Features

Description	Year Added	Units
ELEVATOR - PASSENGER	1976	2

Building Front Photo

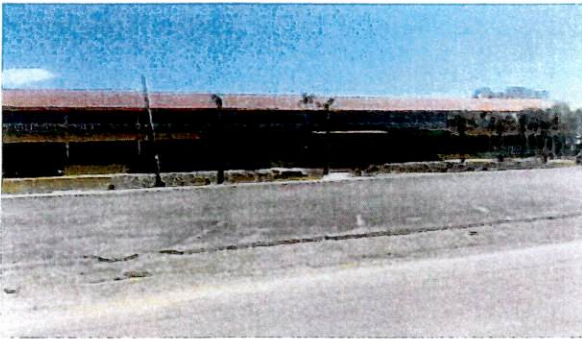
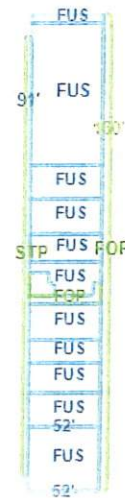


Photo Date: January of 2024

Building Footprint



Taxing Authorities

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TOWN OF FM BCH / FM BCH DOWNTOWN REDEV / 277

Name / Code	Category	Mailing Address
LEE CO GENERAL REVENUE / 044	County	LEE COUNTY OFFICE OF MGMT & BUDGET PO BOX 398 FORT MYERS FL 33902-0398
FORT MYERS BEACH FIRE CONTROL DIST / 032	Independent District	FORT MYERS BEACH FIRE CONTROL DIST 100 VOORHIS ST FORT MYERS BEACH FL 33931
FORT MYERS BEACH MOSQUITO CONTROL / 035	Independent District	FORT MYERS BEACH MOSQUITO CONTROL PO BOX 2837 FORT MYERS BEACH FL 33932-2837
FORT MYERS BEACH PUBLIC LIBRARY DIST / 033	Independent District	FORT MYERS BEACH PUBLIC LIBRARY DIST 2755 ESTERO BLVD FORT MYERS BEACH FL 33931
LEE CO HYACINTH CONTROL DIST / 051	Independent District	LEE CO HYACINTH CONTROL DIST 15191 HOMESTEAD RD LEHIGH ACRES FL 33971

WEST COAST INLAND NAVIGATION DIST / 098

Independent District

WEST COAST INLAND NAVIGATION DIST
200 MIAMI AVE E
VENICE FL 34285-2408

TOWN OF FORT MYERS BEACH FLORIDA / 118

Municipal

TOWN OF FORT MYERS BEACH
2523 ESTERO BLVD
FORT MYERS BEACH FL 33931

PUBLIC SCHOOL - BY LOCAL BOARD / 012

Public Schools

LEE COUNTY SCHOOL BOARD
BUDGET DEPARTMENT
2855 COLONIAL BLVD
FORT MYERS FL 33966

PUBLIC SCHOOL - BY STATE LAW / 013

Public Schools

LEE COUNTY SCHOOL BOARD
BUDGET DEPARTMENT
2855 COLONIAL BLVD
FORT MYERS FL 33966

SFWMD-DISTRICT-WIDE / 110

Water District

SFWMD
3301 GUN CLUB RD
WEST PALM BEACH FL 33406

SFWMD-EVERGLADES CONSTRUCTION PROJECT / 084

Water District

SFWMD
3301 GUN CLUB RD
WEST PALM BEACH FL 33406

SFWMD-OKEECHOBEE BASIN / 308

Water District

SFWMD
3301 GUN CLUB RD
WEST PALM BEACH FL 33406

Sales / Transactions

Generated on 7/9/2024 7:41 AM

Sale Price	Date	Clerk File Number	Type	Notes	Vacant/ Improved
3,990,000.00	03/01/2017	2017000045126	01		I
0.00	11/01/1986	1885/2396	01		I
1,529,000.00	11/01/1980	1468/1697	06		I

[View Recorded Plat at LeeClerk.org](#)

Use the above link to do a search on the Lee County Clerk of Courts website, using **3** and **84** for the book and page numbers and **Plats Book** for the book type.

Help safeguard your home against property fraud. Sign up for the Lee Clerk's free [Property Fraud Alert](#).

Building / Construction Permit Data

Generated on 7/9/2024 7:41 AM

Permit Number	Permit Type	Date
241099	Electric	04/26/2024
240525	Plumbing	02/28/2024
234288	Building Remodel / Repair	10/11/2023
232764	Building Window / Door Replacement	04/24/2023
221098	Roof / Sheds	07/26/2022
211840	Electric	11/16/2021
210752	Site Development - Driveway / Sidewalks	05/25/2021
SGN18-0013	Building Miscellaneous	07/11/2018
MEC18-0239	AC New / Change out	06/06/2018

ELE18-0169	Electric	06/05/2018
PLB18-0110	Plumbing	06/05/2018
COM18-0129	Building Remodel / Repair	05/22/2018
ROF18-0061	Roof	02/22/2018
ELE17-0374	Electric	11/17/2017
PLB17-0239	Plumbing	10/24/2017
COM17-0033	Roof	07/31/2017
FNC16-0033	Fence	05/13/2016
MEC15-0034	AC New / Change out	02/12/2015
SGN14-0017	Building Miscellaneous	01/12/2015
MEC14-0171	AC New / Change out	06/17/2014
MEC14-0172	AC New / Change out	06/17/2014
MEC14-0128	AC New / Change out	05/27/2014
MEC13-0376	AC New / Change out	12/23/2013
PRK12-0011	Building Miscellaneous	12/21/2012
MEC12-0245	AC New / Change out	12/04/2012
ELE11-0170	Electric	10/10/2012
SGN 12-0036	Building Miscellaneous	08/10/2012
SGN12-0030	Building Miscellaneous	07/24/2012
ROF11-0070	Roof	09/20/2011
ROF11-0038	Roof	06/01/2011
COM10-0239	Building Remodel / Repair	12/20/2010
MEC10-0077	AC New / Change out	05/19/2010
FIR10-0008	Fire	03/26/2010
COM09-0190	Building Remodel / Repair	02/09/2010
ELE10-0006	Electric	01/12/2010
MEC09-0122	AC New / Change out	10/12/2009
COM09-0030	Building Remodel / Repair	05/20/2009
FNC09-0009	Fence	04/23/2009
COM09-0014	Building Remodel / Repair	02/24/2009
COM08-0008	Commercial	08/26/2008
DEM2005-00514	Demolition	11/04/2005
FNC2004-01068	Fence	06/30/2004
COM2001-01644	Commercial	11/21/2001
COM2001-00118	Building Remodel / Repair	03/15/2001
FNC2000-00097	Fence	04/12/2000
COM2000-00342	Commercial	03/08/2000
FNC199910262	Fence	09/30/1999
COM199606312	Building Addition	06/19/1996
COM199506061	Commercial	06/29/1995
199409089	Commercial	09/27/1994
COM199301891	Building Miscellaneous	03/01/1993
115019	Commercial	09/21/1992
199009701	Commercial	09/24/1990
COM199009480	Building Miscellaneous	09/17/1990
199002859	Commercial	03/07/1990
811497	Commercial	10/12/1988
715117	Commercial	12/16/1987
611839	Commercial	11/19/1986
112799	Commercial	10/18/1986
77499	Residential	03/20/1981

IMPORTANT: THIS MAY NOT BE A COMPREHENSIVE OR TIMELY LISTING OF PERMITS ISSUED FOR THIS PROPERTY.

Note: The Lee County Property Appraiser's Office does not issue or maintain any permit information. The Building / Construction permit data displayed here represents only those records this Office may find necessary to conduct Property Appraiser business. Use of this information is with the understanding that in no way is this to be considered a comprehensive listing of permits for this or any other parcel.

The Date field represents the date the property appraiser received information regarding permit activity; it may or not represent the actual date of permit issuance or completion.

Full, accurate, active and valid permit information for parcels can only be obtained from the [appropriate permit issuing agency](#).

Parcel Numbering History ⓘ

Generated on 7/9/2024 7:41 AM

Prior STRAP	Prior Folio ID	Renumber Reason	Renumber Date
19-46-24-04-00002.0010	N/A	Reserved for Renumber ONLY	01/12/1995

Solid Waste (Garbage) Roll Data

Generated on 7/9/2024 7:41 AM

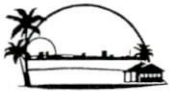
Solid Waste District	Roll Type	Category	Unit / Area	Tax Amount
001 - Service Area 1	C - Commercial Category	C	36054	1,039.10
	Collection Days			
Garbage	Recycling		Horticulture	
Thursday	Thursday		Thursday	

Flood and Storm Information

Generated on 7/9/2024 7:41 AM

Community	Flood Insurance Panel	Find my flood zone Version	Date	Evacuation Zone
071C	0554	G	11/17/2022	A

Generated on 7/9/2024 7:41 AM



Lee County Tax Collector

Noelle Branning

2023 Paid Real Estate Tax Notice

Ad Valorem Taxes and Non-ad Valorem Assessments for Lee County, Florida

Account Number:
19-46-24-W4-00402.0010
Alternate Key:
2100387332
Millage Code:
277

Site Address / Legal Description:
1661 ESTERO BLVD
HILLS T P SUBD PB 3 PG 84 PT LT 11 DESC
OR 1468 PG 1697 LESS N 275 FT

Exemptions/Values:
Assessed Value 5,514,752

* See message below

KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381

Paid 11/21/2023 DP-00-01758352 \$65,058.64

Ad Valorem Taxes Levying Authority

	Telephone	Mill Rate	Assessed	Exemption	Taxable	Amount
LEE COUNTY GENERAL REVENUE	239-533-2221	3.7623	4,391,530	0	4,391,530	16,522.25
PUBLIC SCHOOL - BY LOCAL BOARD	239-337-8215	2.2480	5,514,752	0	5,514,752	12,397.16
PUBLIC SCHOOL - BY STATE LAW	239-337-8215	3.1820	5,514,752	0	5,514,752	17,547.94
TOWN OF FORT MYERS BEACH	239-765-0202	0.9900	4,391,530	0	4,391,530	4,347.61
SFL WATER MGMT-DISTRICT LEVY	561-686-8800	0.0948	4,391,530	0	4,391,530	416.32
SFL WATER MGMT-EVERGLADE CONST	561-686-8800	0.0327	4,391,530	0	4,391,530	143.60
SFL WATER MGMT-OKEECHOBEE LEVY	561-686-8800	0.1026	4,391,530	0	4,391,530	450.57
FORT MYERS BEACH FIRE CONTROL DISTRICT	239-590-4200	2.9851	4,391,530	0	4,391,530	13,109.16
FORT MYERS BEACH MOSQUITO	239-463-6350	0.1123	4,391,530	0	4,391,530	493.17
FORT MYERS BEACH LIBRARY	239-463-9691	0.2355	4,391,530	0	4,391,530	1,034.21
LEE COUNTY HYACINTH CONTROL	239-694-2174	0.0217	4,391,530	0	4,391,530	95.30
WEST COAST INLAND NAVIGATION DISTRICT	941-485-9402	0.0394	4,391,530	0	4,391,530	173.03

Non-Ad Valorem Assessments Levying Authority

	Telephone	Rate	Amount
LEE COUNTY SOLID WASTE ASSESSMENT	239-533-8000		1,039.10

2023 Combined Total Ad Valorem and Non-Ad Valorem:

\$67,769.42

2023 Paid Real Estate

Tax Notice

Account: 19-46-24-W4-00402.0010
Site Address: 1661 ESTERO BLVD,
FORT MYERS BEACH,
33931
Alternate Key: 2100387332

PAY ONLY ONE AMOUNT

If Received By: Amount Due:
Nov 30, 2023 \$0.00

Phone/Email Contact: _____

For payment options and instructions, refer to the back of this notice.

* If the address below is not correct, visit LeePA.org to update your address.

KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381

Make check payable to:

LEE COUNTY TAX COLLECTOR
PO BOX 1609
FORT MYERS FL 33902-1609

Paid 11/21/2023 DP-00-01758352 \$65,058.64

Return with payment



IMPORTANT INSTRUCTIONS AND INFORMATION - PLEASE READ

Ad Valorem Taxes cover the period January 1 through December 31 of the tax year indicated on the front of this notice. Tax notices are mailed on or about November 1 and become delinquent April 1. Failure to receive a tax notice does not extend discounts or excuse taxpayers' responsibilities to pay taxes and applicable penalties for late payments. Installment tax notices are mailed in June, September, December and March. Installment payment discounts are: June (6%), September (4.5%) and December (3%).

Governmental Office Responsibilities



Lee County Tax Collector

The Tax Collector prints, mails, and collects payments based on the tax rolls certified by the Property Appraiser and Levying Authorities.

Contact the Tax Collector to:

- Pay your current or delinquent property taxes
- Learn about Partial Payment, Installment Payment, and Homestead Tax Deferral plans
- Print your tax bills and receipts

Phone: 239-533-6000 • Website: LeeTC.com



Lee County Property Appraiser

The Property Appraiser values properties and prepares and certifies the tax roll which includes assessed values, exemptions, legal description, assessed owner(s) name and mailing address.

Contact the Property Appraiser to:

- Ask questions about the assessed value or exemption of your property
- Change your mailing address
- File or check on Homestead and other exemptions

Phone: 239-533-6100 • Website: LeePA.org



Lee County Levying Authorities

Lee County Levying Authorities establish millage rates and assessments based on revenue needed for operating expenses.

Call your Levying Authority with direct questions regarding services provided or rates charged.

A list of Levying Authorities and phone numbers may appear on the front of this notice or can be found on your property tax bill.

Visit LeeTC.com/property-taxes for instructions on viewing your bill.

Discounts

The amounts indicated on the front of this notice represent the total taxes and assessments due (if applicable) less discounts allowed for early payment. When the discount period ends on a weekend or holiday, the discount is extended to the next business day. Taxes are due by March 31 of each year.

4% if paid in **NOVEMBER**

3% if paid in **DECEMBER**

2% if paid in **JANUARY**

1% if paid in **FEBRUARY**

Payment Options

PAY ONLINE



Visit LeeTC.com

Other ways to pay:

Mail: Check or money order.

Phone: 239.533.6000.

In Person: Cash, check, money order, debit card (PIN required), and all major credit cards.

Note: A convenience fee is charged when using a credit or debit card and is subject to service provider rates which may vary. No portion of this fee is retained by the Tax Collector's office.

Note: If using your bank's online bill pay, make sure you allow for processing time so payment arrives by the received date listed on the front of this notice.

Delinquent Taxes

Payment of delinquent taxes must be made in certified U.S. funds drawn on a U.S. bank. The amount due is determined by the date payment is received. Failure to pay delinquent taxes could result in the loss of your property. On April 1 the following charges are imposed by Florida Law:

Real Estate: 3% minimum interest and advertising costs.

A tax certificate sale is held on or before June 1 resulting in additional charges.

Tangible Personal Property: 18% interest annually, cost of advertising, and fees. Tax warrants will be issued on all unpaid personal property taxes on or about June 1.

Confirm Payment

Confirm receipt of your payment online at our official website LeeTC.com. Your taxes are not considered paid until your payment clears our bank and is applied to your tax account.

Have you met Edison?

Edison is our automated chatbot that can answer many of your questions relating to property taxes and much more. Available 24/7, you can find Edison at the bottom of our website, LeeTC.com.



Property Sold: forward this notice to the new owner(s).

NOTICE: Pursuant to Florida Statute 590.125(5), be advised that the Florida Forest Service may be performing prescribed burning and/or other treatments in a project area that includes your property in Lee County, Florida. These efforts are to reduce fuel loads and threat of wildfires. These projects are planned to occur from the date of this notice until the same date the following year. This service is provided at no cost to the affected landowner(s). Contact the Florida Forest Service if you have questions regarding this service at: 10941 Palm Beach Blvd., Fort Myers, FL 33905, or 239.690.8001.

Our Mission: Deliver 5-Star service quickly and efficiently through an organizational culture that values customers, team, and community.



Town of Fort Myers Beach

CODE COMPLIANCE

2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

March 21, 2024

CASE NUMBER:	20240249
CERTIFIED MAIL:	9589071052700183636772

Key Estero Shops LLC
1661 Estero Blvd
Fort Myers Beach, FL 33931

SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **03/18/2024** by Town of Fort Myers Beach Code Enforcement Officer **D. Batt** indicates that the property is in violation of the following Town Code(s):

34-3203: For the operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit.

Sec. 34-3203. - Illegal buildings, uses and lots. "If a building, use, or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses or lots.

(1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c) of this chapter.

(2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations.

The Violation(s) can be brought into compliance by 04/27/2024. Please contact Permitting Dept. and acquire the required Use permit. #(239)220-6955 You are hereby directed to bring these violations into compliance within 30 days of receipt of this notice.

ONCE THIS VIOLATION(S) IS IN COMPLIANCE, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED TO VERIFY THAT THE VIOLATION(S) HAS BEEN 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 brought into compliance 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) 765-0202 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

D. Batt

Code Enforcement Officer
Town of Fort Myers Beach

9589 0710 5270 0183 6367 89

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Milford, MI 48381

OFFICIAL USE

Certified Mail Fee \$4.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$0.92

Total Postage and Fees \$5.32

Sent To Lora Naccarato 20240249

Street and Apt. No., or PO Box No. 3220 Pine Cone Ct 1661 Estero

City, State, ZIP+4® Milford, MI 48381 Nov Agent

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

9589 0710 5270 0183 6367 96

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Milford, MI 48381

OFFICIAL USE

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☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$0.92

Total Postage and Fees \$5.32

Sent To Key Estero Shop LLC 20240249

Street and Apt. No., or PO Box No. 3220 Pine Cone Ct 1661 Estero

City, State, ZIP+4® Milford, MI 48381

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

9589 0710 5270 0183 6367 72

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Fort Myers Beach, FL 33931

OFFICIAL USE

Certified Mail Fee \$4.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$0.92

Total Postage and Fees \$5.32

Sent To Key Estero Shops 1661 Estero

Street and Apt. No., or PO Box No. 1661 Estero Blvd 20240249

City, State, ZIP+4® Ft Myers Beach, FL 33931 Nov Prop

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

Mar 18, 2024 at 3:12:15 PM
Town of Fort Myers Beach



Exhibit A

Mar 18, 2024 at 3:13:10 PM
Town of Fort Myers Beach



Mar 18, 2024 at 3:13:28 PM
Town of Fort Myers Beach



Mar 18, 2024 at 3:13:03 PM
Town of Fort Myers Beach



After Recording Return To:
Mandy Schutt FRP
Schutt Law Firm, P.A.
12601 New brittany Blvd.
Fort Myers, FL 33907

This Instrument Prepared by:
Mandy Schutt FRP
Schutt Law Firm, P.A.
12601 New Brittany Blvd.
Fort Myers, FL 33907
as a necessary incident to the fulfillment of conditions
contained in a title insurance commitment issued by it.

Property Appraisers Parcel I.D. (Folio) Number(s):
19-46-24-W4-00402.0010
File No.: 1610020

WARRANTY DEED

This Warranty Deed, made the 1st day of March, 2017, by **Beate Rotermund, Inc., a Florida Corporation**, hereinafter called the grantor, whose post office address is: 3333 Renaissance Blvd., Suite 213, Bonita Springs, FL 34134, to **Key Estero Shops, LLC, a Michigan Limited Liability Company**, whose post office address is: 3220 Pine Cone Court, Milford, MI 48381, hereinafter called the grantee,

WITNESSETH: That said grantor, for and in consideration of the sum of \$3,990,000.00 Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Lee County, Florida, to wit:

A tract or parcel of land lying in Lot 11, T.P. HILL'S SUBDIVISION, as recorded in Plat Book 3 at page 84, of the Public Records of Lee County, Florida, described as follows:

BEGIN at a concrete monument marking the Southeast corner of said Lot 11; thence run N 68° 52' 30" W. along the Northerly R/W of Estero Boulevard, a distance of 274.39' to the Easterly R/W of Carolina Ave.; thence run N 1° 00' E. along said Easterly R/W, a distance of 652.21'; thence run S 89° 16' E., a distance of 254.16' to the Easterly line of said Lot 11, thence run S 0° 44' W., a distance of 747.81' to the Point of Beginning.

LESS AND EXCEPT the North 275 feet as described in Official Record Book 1781 at Page 3018.

The property is not the homestead of the Grantor(s).

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to 2016, reservations, restrictions and easements of record, if any.

(The terms "grantor" and "grantee" herein shall be construed to include all genders and singular or plural as the context indicates.)

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal the day and year first above written.

SIGNED IN THE PRESENCE OF THE FOLLOWING WITNESSES
TWO SEPARATE DISINTERESTED WITNESSES REQUIRED

Witness Signature: [Signature]
Printed Name: Darwin L. Scott

Witness Signature: [Signature]
Printed Name: Vronne M. Lucas

BEATE ROTERMUND, INC.
[Signature]
Ulrich Rotermund
President

State of Florida
County of Lee

The foregoing instrument was acknowledged before me this 1st day of March, 2017 by Ulrich Rotermund as President of Beate Rotermund, Inc., a Florida Corporation on behalf of said entity. He is personally known to me or has produced German Passport as identification.

My Commission Expires: _____
[Signature]
Notary Public Signature
Printed Name: _____
Serial Number Nichole L. Grimes





EXHIBIT E

Sec. 34-3203. - Illegal buildings, uses and lots.

If a building, use, or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses or lots.

- (1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c) of this chapter.
- (2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations.

Sec. 2-429. - Notices.

- (a) All notices required by this article will be provided to the alleged violator by: (i) certified mail, return receipt requested, subject to the provisions of subsection (b) below; or (ii) by hand delivery by the sheriff or other law enforcement officer, code enforcement officer, or other person designated by the director; or (iii) by leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or (iv) in the case of commercial premises, leaving the notice with the manager or other person in charge.
- (b) If notice is sent via certified mail, return receipt requested, to the owner of the property in question at the address listed in the Lee County Tax Collector's Office for tax notices, and at any other address provided to the town by such owner, and is returned as unclaimed or refused, notice may be provided by posting as described in subsections (c)(1) and (2) below, and by first class mail directed to the addresses furnished to the town, with a properly executed proof of mailing or affidavit confirming the first class mailing.
- (c) In addition to provision of notice as set forth in subsection (a), notice may also be served by publication or posting, as follows:
 - (1) Such notice will be published once during each week for four consecutive weeks (four publications being sufficient) in a Lee County newspaper of general circulation. The newspaper must meet the requirements prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication must be made in accordance with F.S. §§ 50.041 and 50.051.
 - (2) In lieu of publication as described in subsection (c)(1) above, such notice may be posted for at least ten days prior to the hearing or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which must be the property upon which the violation is alleged to exist and the other must be at Town Hall for the Town of Fort Myers Beach. Proof of posting must be by affidavit of the person posting the notice. The affidavit must include a copy of the notice posted and the date and places of its posting.
 - (3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a) above.
- (d) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsections (a) and (b), together with proof of publication or posting as provided in subsection (c), will be sufficient to show the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

EXHIBIT F



Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING
 2731 Oak Street Fort Myers Beach, FL 33931
 Phone: (239) 765-0202 Fax: (239) 765-0909

07/09/2024

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381,
Respondent.

Case Number:	20240249
Certified Mail:	70222410000084691901
Regular Mail:	

SITE ADDRESS: **1661 ESTERO BLVD**
 PARCEL STRAP NO: **194624W4004020010**

NOTICE OF CODE ENFORCEMENT HEARING

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 162, Florida Statutes and Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that (an) uncorrected violation(s) of one or more codes of the Town of Fort Myers Beach, as described in the **NOTICE OF VIOLATION**, previously provided to you (a copy of which is enclosed herewith), exists on the above-described property. A hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has, therefore, been scheduled for **at 08/06/2024 at 1:30 P.M.** in the Council Chambers at Town Hall, located at 2731 Oak St., Fort Myers Beach, Florida.

A copy of the evidentiary case file and all materials provided by the Town to the Special Magistrate in relation to this hearing can be viewed and accessed in advance of the hearing at the link below:

<http://www.fortmyersbeachfl.gov/209/Meetings-Agendas>

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 any other action(s) that may affect your rights. If you believe you have come into compliance, it is your responsibility to contact the Code Enforcement Division so that an inspection can be performed to determine compliance.

D. Batt

Code Enforcement Officer
 Town of Fort Myers Beach

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 NOTIFY THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202, AT LEAST 72 BUSINESS HOURS BEFORE THE HEARING DATE.

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



Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING
 2731 Oak Street Fort Myers Beach, FL 33931
 Phone: (239) 765-0202 Fax: (239) 765-0909

07/09/2024

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

Lora Naccarato Registered Agent for
KEY ESTERO SHOPS LLC
3220 Pine Cone Ct
Milford, MI 48381,

Respondent.

SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010

Case Number:	20240249
Certified Mail:	70222410000084691918
Regular Mail:	

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D. Batt

Code Enforcement Officer
 Town of Fort Myers Beach

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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 BY A COURT REPORTER UPON WHICH THE APPEAL IS TO BE BASED.



Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING
 2731 Oak Street Fort Myers Beach, FL 33931
 Phone: (239) 765-0202 Fax: (239) 765-0909

07/09/2024

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

Key Estero Shops Registered Agent for
KEY ESTERO SHOPS LLC
1661 Estero Blvd
Fort Myers Beach, FL 33931,

Respondent.

Case Number:	20240249
Certified Mail:	70222410000084691925
Regular Mail:	

SITE ADDRESS: **1661 ESTERO BLVD**
 PARCEL STRAP NO: **194624W4004020010**

NOTICE OF CODE ENFORCEMENT HEARING

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 162, Florida Statutes and Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that (an) uncorrected violation(s) of one or more codes of the Town of Fort Myers Beach, as described in the **NOTICE OF VIOLATION**, previously provided to you (a copy of which is enclosed herewith), exists on the above-described property. A hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has, therefore, been scheduled for **at 08/06/2024 at 1:30 P.M.** in the Council Chambers at Town Hall, located at 2731 Oak St., Fort Myers Beach, Florida.

A copy of the evidentiary case file and all materials provided by the Town to the Special Magistrate in relation to this hearing can be viewed and accessed in advance of the hearing at the link below:

<http://www.fortmyersbeachfl.gov/209/Meetings-Agendas>

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 any other action(s) that may affect your rights. If you believe you have come into compliance, it is your responsibility to contact the Code Enforcement Division so that an inspection can be performed to determine compliance.

D. Batt

Code Enforcement Officer
 Town of Fort Myers Beach

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 NOTIFY THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202, AT LEAST 72 BUSINESS HOURS BEFORE THE HEARING DATE.

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 BY A COURT REPORTER UPON WHICH THE APPEAL IS TO BE BASED.

EXHIBIT G



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

1/31/2019

**KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381**

CASE NUMBER:	CE19-0026
CERTIFIED MAIL:	7018 2290 0001 4413 8365

**SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **1/31/2019** by Town of Fort Myers Beach Code Enforcement Officer **JOE KONTOMANOLIS** indicates that the following items are a violation:

Operating Parking Lot w/out a USE Permit

These items are a violation of the following Town Codes:

LDC Sec. 34-3203. - Illegal buildings, uses and lots.

If a building, use, or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses or lots.

(1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c) of this chapter.

(2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations.

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:
Obtain a permit and pass all subsequent 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) 765-0202 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

JOE KONTOMANOLIS

Code Enforcement Officer
Town of Fort Myers Beach

Received By: _____ Date: _____

PARCEL #: 19-46-24-W4-00402.0010

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. CE19-0026

KEY ESTERO SHOPS, LLC,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on August 20, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Key Estero Shops, LLC appearing by and through its designated representative, Robert Burandt, Esq. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Key Estero Shops, LLC ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 1661 Estero Blvd., Fort Myers Beach, FL 33931 ("Property"), legally described as:

A tract or parcel of land lying in Lot 11, T.P. HILL'S SUBDIVISION, as recorded in Plat Book 3 at Page 84, of the Public Records of Lee County, Florida, described as follows:

Begin at a concrete monument marking the Southeast corner of said Lot 11; thence run N 68°52'30"W. along the Northerly R/W of Estero Boulevard, a distance of 274.39' to the Easterly R/W of Carolina Ave.; thence run N 1°00'E along said Easterly R/W, a distance

of 652.21'; thence run S 89°16'E., a distance of 254.16' to the Easterly line of said Lot 11, thence run S 0°44'W., a distance of 747.81' to the Point of Beginning.

LESS AND EXCEPT the North 275 feet as described in Official Record Book 1781 at Page 3018.

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 34-3203 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, not paid the accrued fine in the amount of \$34,400.00, which began to accrue on March 1, 2020 and continues to accrue in the amount of \$200.00 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 August 20, 2020.

B. CONCLUSION OF LAW:

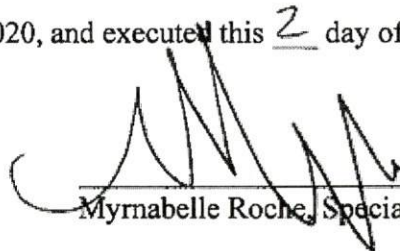
1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$34,475.00, has accrued as of the date of this hearing and continues to accrue in the amount of \$200.00 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 20th day of August, 2020, and executed this 2 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

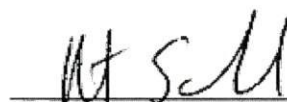
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 9 day of September, 2020 to:

Key Estero Shops, LLC
3220 Pine Cone Ct.
Milford, MI 48381

Lora Naccarato, Registered Agent for:
Key Estero Shops, LLC
3220 Pine Cone Ct.
Milford, MI 48381

Robert R. Burandt, Esq.
Burandt, Adamski, Feichthaler, & Sanchez, PLLC
1714 Cape Coral Parkway East
Cape Coral, Florida 33904


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: At Sell
Dated 9/9/2020

**Instrument Prepared by and Return to:
Fort Myers Beach Code Enforcement
2525 Estero Blvd.
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 Bill Stout, Code Enforcement Officer for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. On the 30th day of January, 2020, Key Estero Shops, LLC ("Property Owner") was found in violation of Section 34-3203 of the Town of Fort Myers Beach Land Development Code- "Illegal Buildings, Uses and Lots", for operating an illegal parking lot at the property located at 1661 Estero Blvd., Fort Myers Beach, FL ("Subject Property") by virtue of a Code Enforcement Order by the Special Magistrate in CE Case No. CE19-0026.
2. The Order was recorded as Instrument No. 2020000042745 on the 18th day of February 2020, in the public records of Lee County, Florida.
3. The Property Owner was given 30 days to come into compliance with the Special Magistrate's Order, which was to occur on or before the 29th day of February 2020.

4. On the 2nd day of March 2020, according to available records in possession of the Town of Fort Myers Beach, an inspection was completed by a Code Enforcement Officer, who found the Subject Property was still in violation of Town Code.
5. On the 20th day of August 2020, a Hearing to Impose Lien was held before the Special Magistrate, who certified the fines, and ordered the fines to continue to accrue at a rate of \$200.00 per day until compliance was achieved.
6. The Order Imposing Lien was recorded as Instrument No. 2020000215556 on the 11th day of September 2020, in the public records of Lee County, Florida.
7. On September 28, 2022, the Town was under a State of Emergency due to Hurricane Ian, a Category V storm, which required evacuation and upon landfall severely destroyed the residences and businesses as well as the Town's infrastructure. Access to the Town was closed for several weeks. There was an impossibility of a continued violation to exist as of September 28, 2022. Therefore, the Subject Property was found in compliance as of September 28, 2022.
8. In summary, the Subject Property was not in compliance for 942 days with a fine that accrued at \$200.00 per day for a total fine of \$188,400.00, plus \$75.00 in administrative fees for a total amount of \$188,475.00 due to the Town to satisfy the lien.
9. Once the lien is paid and satisfied, the Enforcement Case No. CE19-0026 will be closed and a copy of the Satisfaction/Release will be recorded in the Official Records of Lee County, Florida.
10. 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 23 day of FEBRUARY, 2024.

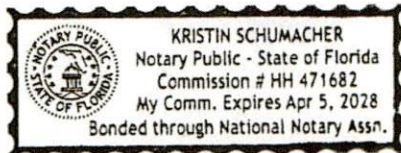
Bill Stout

Print Name: Bill Stout

Code Enforcement Officer

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23 day of February, 2024 by Bill Stout, as Code Officer, who is personally known to me, or has produced _____ as identification.



Kristin Schumacher
Signature of Notary

Kristin Schumacher
(Name typed, printed or stamped)

My Commission expires: April 5, 2028



FMBgov.com

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

Prepared by:

Thomas Yozzo
Code Compliance Manager
The Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

SATISFACTION AND RELEASE OF CODE ENFORCEMENT LIEN

Property Owner: Key Estero Shops LLC

Strap/Parcel: #19-46-24-W4-00402.0010

Property Address: 1661 Estero Blvd, Fort Myers Beach, FL33931

KNOW ALL BY THESE PRESENTS that the Town of Fort Myers Beach, a Florida municipal government, having an address of 2731 Oak St., Fort Myers Beach, Lee, Florida 33931, having heretofore filed a **Claim of Lien for Code Compliance Civil Violation** as authorized by Town Code, under **Code Compliance Case**.

That as of the date hereof, the Town of Fort Myers Beach does hereby release all the liens associated with Code Compliance case CE19-0026; said Release of Lien related to the following described real property located in Fort Myers Beach, Florida, under instrument #2020000215556 and recorded on 009/11/2020: Wit.

Property Description:

HILLS T P SUBD PB 3 PG 84 PT LT 11 DESC OR 1468 PG 1697 LESS N 275 FT

This Satisfaction and Release of Lien is being recorded in the Public Records of Lee County, Florida, to give notice to all persons that the Property noted above has satisfied the requirements set forth in the Claim of Lien, and the Town of Fort Myers Beach no longer claims a lien against the Property for this code compliance case.

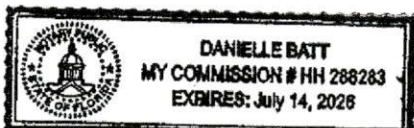
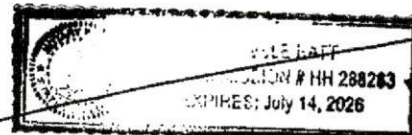
By: Thomas Yozzo
Thomas Yozzo, Code Compliance Manager
For the Town of Fort Myers Beach, Florida

03/19/2024
Date

State of Florida
County of Lee

The foregoing instrument was acknowledged before me this 19th day of March, 2024, by Thomas Yozzo, on behalf of the Town of Fort Myers Beach, who is personally known to me.
(Seal below)

Danielle Batt
Notary Public, State of Florida



FORT MYERS BEACH ESTERO ISLAND

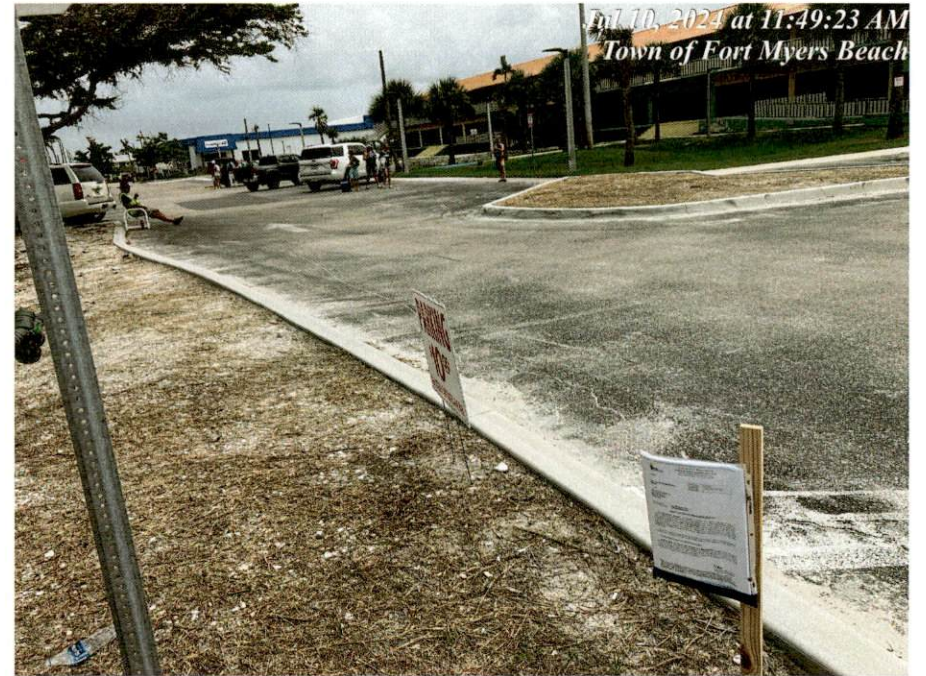
P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



Jul 10, 2024 at 11:49:20 AM
Town of Fort Myers Beach



Jul 10, 2024 at 11:49:15 AM
Town of Fort Myers Beach



Jul 10, 2024 at 11:49:23 AM
Town of Fort Myers Beach



Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING
2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

07/09/2024

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381,
Respondent.

SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010

Case Number:	20240249
Certified Mail:	70222410000084691901
Regular Mail:	

NOTICE OF CODE ENFORCEMENT HEARING

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 162, Florida Statutes and Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that (an) uncorrected violation(s) of one or more codes of the Town of Fort Myers Beach, as described in the **NOTICE OF VIOLATION**, previously provided to you (a copy of which is enclosed herewith), exists on the above-described property. A hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has, therefore, been scheduled for at **08/06/2024 at 1:30 P.M.** in the Council Chambers at Town Hall, located at 2731 Oak St., Fort Myers Beach, Florida.

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D. Batt

Code Enforcement Officer
Town of Fort Myers Beach

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Town of Fort Myers Beach
Jul 10, 2024 at 12:00:16 PM

7022 2410 0000 8469 1925

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
Fort Myers Beach, FL 33931	
Certified Mail Fee	\$4.40
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$3.79
Total Postage and Fees	\$11.84
Sent To Key Esteo Shops LLC Street and Apt. No., or PO Box No. 11661 Esteo Blvd City, State, ZIP+4® Fort Myers Beach, FL 33931	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

7022 2410 0000 8469 1918

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
Milford, MI 48381	
Certified Mail Fee	\$4.40
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$3.79
Total Postage and Fees	\$11.84
Sent To Reg Agent Nora Nancarat Street and Apt. No., or PO Box No. 3320 Pine Cone Ct City, State, ZIP+4® Milford, MI 48381	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

7022 2410 0000 8469 1901

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
Milford, MI 48381	
Certified Mail Fee	\$4.40
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$3.79
Total Postage and Fees	\$11.84
Sent To Key Esteo Shops LLC Street and Apt. No., or PO Box No. 3320 Pine Cone Ct City, State, ZIP+4® Milford, MI 48381	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

ALERT: FLOODING AND SEVERE WEATHER IN THE SOUTHERN AND CENTRAL U.S. MAY IMPA...

Tracking Number:

Remove X

70222410000084691925

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

Feedback

Latest Update

Your package will arrive later than expected, but is still on its way. It is currently in transit to the next facility.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Moving Through Network

In Transit to Next Facility, Arriving Late

July 31, 2024

Arrived at USPS Regional Facility

FORT MYERS FL DISTRIBUTION CENTER
July 27, 2024, 12:55 pm

Arrived at USPS Regional Facility

GAINESVILLE FL DISTRIBUTION CENTER
July 23, 2024, 9:57 pm

Departed USPS Regional Facility

FORT MYERS FL DISTRIBUTION CENTER
July 11, 2024, 7:52 am

Arrived at USPS Regional Facility

FORT MYERS FL DISTRIBUTION CENTER
July 10, 2024, 10:21 pm



USPS in possession of item
FORT MYERS BEACH, FL 33931
July 10, 2024, 1:06 pm

Hide Tracking History

What Do USPS Tracking Statuses Mean? (<https://faq.usps.com/s/article/Where-is-my-package>)

Text & Email Updates



USPS Tracking Plus®



Product Information



See Less ^

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs

ALERT: FLOODING AND SEVERE WEATHER IN THE SOUTHERN AND CENTRAL U.S. MAY IMPA...

USPS Tracking®

FAQs >

Tracking Number:

Remove X

70222410000084691918

Copy Add to Informed Delivery (<https://informedelivery.usps.com/>)

Feedback

Latest Update

Your item was delivered to an individual at the address at 11:59 am on July 29, 2024 in MILFORD, MI 48381.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Left with Individual

MILFORD, MI 48381
July 29, 2024, 11:59 am

Held at Post Office, At Customer Request

MILFORD, MI 48381
July 15, 2024, 8:35 am

In Transit to Next Facility

July 14, 2024

Arrived at USPS Regional Destination Facility

PONTIAC MI DISTRIBUTION CENTER
July 13, 2024, 4:07 pm

Departed USPS Regional Facility

FORT MYERS FL DISTRIBUTION CENTER
July 11, 2024, 7:52 am

- **Arrived at USPS Regional Origin Facility**
FORT MYERS FL DISTRIBUTION CENTER
July 10, 2024, 10:21 pm
- **USPS in possession of item**
FORT MYERS BEACH, FL 33931
July 10, 2024, 1:05 pm
- **Hide Tracking History**

What Do USPS Tracking Statuses Mean? (<https://faq.usps.com/s/article/Where-is-my-package>)

Text & Email Updates	▼
USPS Tracking Plus®	▼
Product Information	▼
See Less ^	

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs

ALERT: FLOODING AND SEVERE WEATHER IN THE SOUTHERN AND CENTRAL U.S. MAY IMPA...

Tracking Number:

70222410000084691901

Remove X

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

Feedback

Latest Update

Your item was delivered to an individual at the address at 11:59 am on July 29, 2024 in MILFORD, MI 48381.

Get More Out of USPS Tracking:
USPS Tracking Plus®

Delivered
Delivered, Left with Individual
MILFORD, MI 48381
July 29, 2024, 11:59 am

Held at Post Office, At Customer Request
MILFORD, MI 48381
July 15, 2024, 8:34 am

In Transit to Next Facility
July 14, 2024

Arrived at USPS Regional Destination Facility
PONTIAC MI DISTRIBUTION CENTER
July 13, 2024, 4:07 pm

Departed USPS Regional Facility
FORT MYERS FL DISTRIBUTION CENTER
July 11, 2024, 7:52 am

- **Arrived at USPS Regional Origin Facility**
FORT MYERS FL DISTRIBUTION CENTER
July 10, 2024, 10:21 pm
- **USPS in possession of item**
FORT MYERS BEACH, FL 33931
July 10, 2024, 1:04 pm
- **Hide Tracking History**

What Do USPS Tracking Statuses Mean? (<https://faq.usps.com/s/article/Where-is-my-package>)

Text & Email Updates	▼
USPS Tracking Plus®	▼
Product Information	▼
See Less ^	

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs



EXHIBIT H



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

1/31/2019

**KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381**

CASE NUMBER:	CE19-0026
CERTIFIED MAIL:	7018 2290 0001 4413 8365

**SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **1/31/2019** by Town of Fort Myers Beach Code Enforcement Officer **JOE KONTOMANOLIS** indicates that the following items are a violation:

Operating Parking Lot w/out a USE Permit

These items are a violation of the following Town Codes:

LDC Sec. 34-3203. - Illegal buildings, uses and lots.

If a building, use, or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses or lots.

(1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c) of this chapter.

(2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations.

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:
Obtain a permit and pass all subsequent 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) 765-0202 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

JOE KONTOMANOLIS

Code Enforcement Officer

Town of Fort Myers Beach

Received By: _____ Date: _____

PARCEL #: 19-46-24-W4-00402.0010
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. CE19-0026

KEY ESTERO SHOPS, LLC,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on August 20, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Key Estero Shops, LLC appearing by and through its designated representative, Robert Burandt, Esq. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Key Estero Shops, LLC ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 1661 Estero Blvd., Fort Myers Beach, FL 33931 ("Property"), legally described as:

A tract or parcel of land lying in Lot 11, T.P. HILL'S SUBDIVISION, as recorded in Plat Book 3 at Page 84, of the Public Records of Lee County, Florida, described as follows:

Begin at a concrete monument marking the Southeast corner of said Lot 11; thence run N 68°52'30"W. along the Northerly R/W of Estero Boulevard, a distance of 274.39' to the Easterly R/W of Carolina Ave.; thence run N 1°00'E along said Easterly R/W, a distance

of 652.21'; thence run S 89°16'E., a distance of 254.16' to the Easterly line of said Lot 11, thence run S 0°44'W., a distance of 747.81' to the Point of Beginning.

LESS AND EXCEPT the North 275 feet as described in Official Record Book 1781 at Page 3018.

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 34-3203 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, not paid the accrued fine in the amount of \$34,400.00, which began to accrue on March 1, 2020 and continues to accrue in the amount of \$200.00 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 August 20, 2020.

B. CONCLUSION OF LAW:

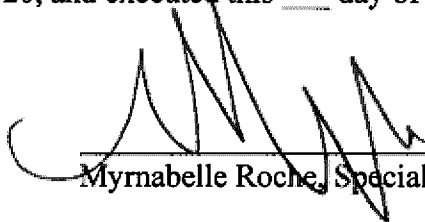
1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$34,475.00, has accrued as of the date of this hearing and continues to accrue in the amount of \$200.00 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 20th day of August, 2020, and executed this 2 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

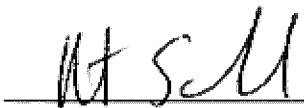
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 9 day of September, 2020 to:

Key Estero Shops, LLC
3220 Pine Cone Ct.
Milford, MI 48381

Lora Naccarato, Registered Agent for:
Key Estero Shops, LLC
3220 Pine Cone Ct.
Milford, MI 48381

Robert R. Burandt, Esq.
Burandt, Adamski, Feichthaler, & Sanchez, PLLC
1714 Cape Coral Parkway East
Cape Coral, Florida 33904


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: At Sell
Dated 9/9/2020



FMBgov.com

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

Prepared by:

Thomas Yozzo
Code Compliance Manager
The Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

SATISFACTION AND RELEASE OF CODE ENFORCEMENT LIEN

Property Owner: Key Estero Shops LLC

Strap/Parcel: #19-46-24-W4-00402.0010

Property Address: 1661 Estero Blvd, Fort Myers Beach, FL33931

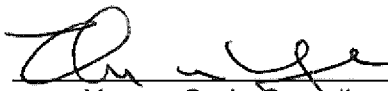
KNOW ALL BY THESE PRESENTS that the Town of Fort Myers Beach, a Florida municipal government, having an address of 2731 Oak St., Fort Myers Beach, Lee, Florida 33931, having heretofore filed a **Claim of Lien for Code Compliance Civil Violation** as authorized by Town Code, under **Code Compliance Case**.

That as of the date hereof, the Town of Fort Myers Beach does hereby release all the liens associated with Code Compliance case CE19-0026; said Release of Lien related to the following described real property located in Fort Myers Beach, Florida, under instrument #2020000215556 and recorded on 009/11/2020: Wit.

Property Description:

HILLS T P SUBD PB 3 PG 84 PT LT 11 DESC OR 1468 PG 1697 LESS N 275 FT

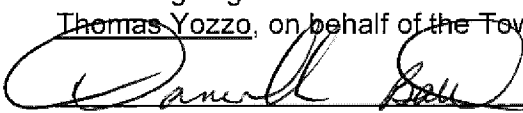
This Satisfaction and Release of Lien is being recorded in the Public Records of Lee County, Florida, to give notice to all persons that the Property noted above has satisfied the requirements set forth in the Claim of Lien, and the Town of Fort Myers Beach no longer claims a lien against the Property for this code compliance case.

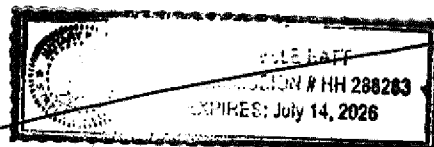
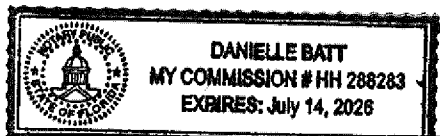
By: 
Thomas Yozzo, Code Compliance Manager
For the Town of Fort Myers Beach, Florida

03/19/2024
Date

State of Florida
County of Lee

The foregoing instrument was acknowledged before me this 19th day of March, 2024, by Thomas Yozzo, on behalf of the Town of Fort Myers Beach, who is personally known to me.
(Seal below)


Notary Public, State of Florida



FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931

**Instrument Prepared by and Return to:
Fort Myers Beach Code Enforcement
2525 Estero Blvd.
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 Bill Stout, Code Enforcement Officer for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. On the 30th day of January, 2020, Key Estero Shops, LLC ("Property Owner") was found in violation of Section 34-3203 of the Town of Fort Myers Beach Land Development Code- "Illegal Buildings, Uses and Lots", for operating an illegal parking lot at the property located at 1661 Estero Blvd., Fort Myers Beach, FL ("Subject Property") by virtue of a Code Enforcement Order by the Special Magistrate in CE Case No. CE19-0026.
2. The Order was recorded as Instrument No. 2020000042745 on the 18th day of February 2020, in the public records of Lee County, Florida.
3. The Property Owner was given 30 days to come into compliance with the Special Magistrate's Order, which was to occur on or before the 29th day of February 2020.

4. On the 2nd day of March 2020, according to available records in possession of the Town of Fort Myers Beach, an inspection was completed by a Code Enforcement Officer, who found the Subject Property was still in violation of Town Code.
5. On the 20th day of August 2020, a Hearing to Impose Lien was held before the Special Magistrate, who certified the fines, and ordered the fines to continue to accrue at a rate of \$200.00 per day until compliance was achieved.
6. The Order Imposing Lien was recorded as Instrument No. 2020000215556 on the 11th day of September 2020, in the public records of Lee County, Florida.
7. On September 28, 2022, the Town was under a State of Emergency due to Hurricane Ian, a Category V storm, which required evacuation and upon landfall severely destroyed the residences and businesses as well as the Town's infrastructure. Access to the Town was closed for several weeks. There was an impossibility of a continued violation to exist as of September 28, 2022. Therefore, the Subject Property was found in compliance as of September 28, 2022.
8. In summary, the Subject Property was not in compliance for 942 days with a fine that accrued at \$200.00 per day for a total fine of \$188,400.00, plus \$75.00 in administrative fees for a total amount of \$188,475.00 due to the Town to satisfy the lien.
9. Once the lien is paid and satisfied, the Enforcement Case No. CE19-0026 will be closed and a copy of the Satisfaction/Release will be recorded in the Official Records of Lee County, Florida.
10. 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 23 day of FEBRUARY, 2024.

Bill Stout

Print Name: Bill Stout
Code Enforcement Officer

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23 day of February, 2024 by Bill Stout, as Code Officer, who is personally known to me or has produced _____ as identification.



Kristin Schumacher
Signature of Notary

Kristin Schumacher
(Name typed, printed or stamped)

My Commission expires: April 5, 2028

EXHIBIT I

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. 20240249

KEY ESTERO SHOPS, LLC,

Respondent.

**ORDER CONTINUING HEARING,
PARTIAL FINDINGS AND CONCLUSIONS OF LAW**

THIS CAUSE came on for public hearing on August 6, 2024, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with Respondent, Key Estero Shops, LLC, appearing by and through its counsel, Amy Thibaut, on the Town's Request for an Order to Correct a Repeat Violation of Section 34-3203 of the Fort Myers Beach Land Development Code and Imposing a Fine for the Violation. Having considered the sworn testimony, evidence submitted, and arguments presented, the Special Magistrate issues the following findings and conclusions, and orders as follows:

I. FINDINGS OF FACTS

- 1) The subject property is located at 1661 Estero Boulevard, Fort Myers Beach, Florida. The property is a commercial property and is not homesteaded.
- 2) The Town inspected the subject property on March 18, 2024, and found the property to be in violation of section 34-3203 of the Fort Myers Beach Land Development Code, for the operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit.
- 3) On March 21, 2024, the Town sent respondent a Notice of Violation and gave Respondent 30 days to bring the property into compliance.

4) On August 8, 2024, the Town conducted an inspection of the property, and the property had not been brought into compliance. Respondent continued its operation of the parking lot as described above, in violation of Code Section 34-3203.

5) The Town requested a fine of \$500 per day from the date when the repeat violation began, which it asserted to be 141 days to date, totaling a fine of \$70,500 to date, and continuing to accrue. The Town also requested \$250 in costs and an order to correct the violation.

6) Respondent had previously been found to be in violation of this same Code Section. On January 31, 2019, Respondent had been notified of the violation. Respondent was brought before the Special Magistrate; and on January 30, 2020, Respondent was found to be in continued violation, not having brought the property into compliance. A fine was imposed, accruing each day the property was not in compliance, and the Town subsequently recorded a corresponding lien.

7) A fine of \$188,475 accrued as of February, 2024. Thereafter, Respondent satisfied the existing lien, and a Satisfaction and Release of Lien was recorded on March 19, 2024.

8) Respondent has applied for a Special Exception to allow it to lawfully operate its current parking lot on the property. That application was submitted July 11, 2024.

9) The application process takes 60-90 days for review.

10) Respondent does not deny that the use of its parking lot to the public for a fee per vehicle space has continued without obtaining the Use Permit required by the Town. Instead, Respondent asserted multiple affirmative defenses, including laches, continuous lawful non-conforming use, and other equitable defenses. Respondent presented these defenses at oral argument and referenced the existence of evidence that was not in the record; however it submitted no written response to the Town's submissions or evidence in support to prove its affirmative defenses.

11) Respondent requested to be granted additional time to bring the property into compliance due to the application for a Special Exception having been submitted.

12) The Town requested additional time to brief a response to the defenses raised by Respondent for the first time at the hearing.

II. CONCLUSIONS OF LAW

1) While Respondent satisfied the previous lien, Respondent did not bring the subject property into compliance with the Fort Myers Beach Code. The evidence submitted was sufficient to establish a repeat violation of section 34-3203, beginning March 18, 2024. The evidence also established, and Respondent does not dispute, that the operation of the parking lot

has since been continuous. The Town thus met its burden of establishing its prima facie case of Respondent's repeat violation as alleged.

2) A repeat violation accrues a fine of up to \$500 per day beginning on the date that the repeat violation was found until the property is brought into compliance, pursuant to Section 2-427(b)(1) of the Code.

3) Respondent's application for a Special Exception does not stop the fines from accruing or deem the property to be in compliance. If the property continues to operate in violation of Code Section 34-3203, the property will continue to be deemed to be in violation, and fines for a repeat violation will continue to accrue until brought into compliance, absent a valid affirmative defense.

4) Respondent has the burden of proving its affirmative defenses.

5) In light of recent developments, including Respondent's submission of its application for the Special Use Exception, the Affirmative Defenses to the repeat violation that Respondent has raised at hearing, and the requests for additional time, Respondent may be granted additional time to brief the legal issues in the defenses it raised and submit evidence referenced but not entered at the hearing if Respondent wants the undersigned Special Magistrate to consider it. However, this additional time will not excuse further violation of the Fort Myers Beach Code, will not stay the accrual of any continued fines for violation of the Code, and will not deem the property to be in compliance with the Fort Myers Beach Code if Respondent continues its operation of the parking lot in violation of law.

6) In light of recent developments, including Respondent's submission of its application for the Special Use Exception, the Affirmative Defenses to the repeat violation that Respondent has raised at hearing, and the requests for additional time, the Town may be granted additional time to adequately respond to the legal issues raised in the defenses Respondent asserted at hearing.

7) A continuance should be granted to allow the parties this additional time.

III. ORDER

1) Respondent's request for additional time is GRANTED IN PART and DENIED IN PART:

Respondent is hereby granted 10 days from the date of this hearing to submit materials that Respondent would like considered in support of its affirmative defenses, if it chooses to do so, including any brief related to the legal issues as to those affirmative defenses raised at hearing, legal authority, and/or the additional evidence it referenced at hearing. However, this additional time will not stay the accrual of any additional fines and will not deem the property to be in compliance

with the Code should Respondent continue to operate the parking lot in violation of law.

- 2) The Town's request to be allowed additional time to brief its reply to the issues related to the affirmative defenses raised at hearing is GRANTED:

The Town is hereby granted 20 days from the date of this hearing to submit a response brief or other supplemental materials, if it chooses to do so.

- 3) This matter is hereby CONTINUED and will RECONVENE at the next scheduled Special Magistrate hearing in September, 2024, the exact date and time to be determined. The undersigned Special Magistrate reserves final ruling in this matter until then.
- 4) Neither party shall be considered the prevailing party before hearing on this matter reconvenes.

ORDERED this 6th day of August 2024, and executed this 6th day of August 2024.



Special Magistrate

APPEAL: An aggrieved party may appeal a final 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.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 8th day of August, 2024 to:

Key Estero Shops, LLC
3220 Pine Cone Ct.
Milford, MI 48381

Lora Naccarato- Registered Agent for:
Key Estero Shops, LLC
3220 Pine Cone Ct.
Milford, MI 48381

Via email:
Amy Thibaut
athibaut@ralaw.com

Mt Schl
Magistrate 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:

Amy Bale
Town Clerk

Dated:

Aug. 8, 2024

EXHIBIT J

CODE COMPLIANCE SPECIAL MAGISTRATE
FOR THE TOWN OF FORT MYERS BEACH

**TOWN OF FORT MYERS BEACH,
FLORIDA,**

CASE NO. 20240249

Petitioner,

vs.

KEY ESTERO SHOPS, LLC,

Respondent.

RESPONDENT'S BRIEF

Key Estero Shops, LLC (the “**Current Owner**”), by and through the undersigned, files this Brief in response to that Order Continuing Hearing, Partial Findings, and Conclusions of Law dated August 6, 2024.

I. Overview of Property and Case

A. Property Ownership and Use

The subject of this case is the property at 1661 Estero Boulevard (the “**Property**”), located in the Town of Fort Myers Beach, Florida (the “**Town**”). The Property has been developed as a “Shopping and Office Center” pursuant to the approved site plan therefore.¹ The Property was purchased by Key Estero, Ltd. (“**Prior Owner**”) in 1980,² at which time it established the commercial parking use.³ Notably, the Property was zoned BU-1 at that time, pursuant to the then-effective Lee County Zoning Ordinance.

¹ See Exhibit “A,” 1975 Key Estero Site Plan.

² See Exhibit “B,” deed to Key Estero, Ltd. and its successor entity, Beate Rotermund (collectively “Prior Owner”).

³ See Exhibit “C,” affidavits of Prior Owner and Current Owner.

In 2004, the Town adopted the Downtown zoning district and amended its zoning map to designate the Property within the Downtown district. The Current Owner purchased the Property in 2017⁴ and proceeded to continue the existing uses thereon without cessation.⁵

Namely, the extent of the commercial parking use was determined based on the number of spaces available beyond the minimum required for occupancy of the structure. Put another way, the spaces allocated to commercial parking were determined based on a “surplus” of spaces depending on the occupancy of the structure and whether the businesses therein were open or closed (e.g. weekend and holiday parking).⁶ The Prior Owner attested that this practice was put in place in 1980 and that it continued to 2017, and the Current Owner attested that he continued this operation of the use.⁷

B. Historical Zoning Regulations/Approvals – Commercial Parking as Part of Shopping Center

Florida law requires that, “since zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given their broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner.”⁸ Put another way, since zoning laws are in derogation of the common law, as a general rule they are subject to strict construction in favor of the right of the property owner to the unrestricted use of his property.”⁹ Thus, the analysis of the applicable zoning regulations contained herein should be construed in favor of the property owner where there is potential ambiguity.

⁴ See Exhibit “D,” deed to Key Estero Shops, LLC.

⁵ See Exhibit “C.”

⁶ See Id.

⁷ See Id.

⁸ *Rinker Materials Corp. v. City of North Miami*, 286 So.2d 552, 553 (Fla. 1973).

⁹ *Persaud Properties FL Investments, LLC v. Town of Fort Myers Beach*, 310 So.3d 493, 496 (Fla. 2d DCA 2020), quoting *City of Miami Beach v. 100 Lincoln Rd., Inc.*, 214 So. 2d 39, 39 (Fla. 3d DCA 1968).

As discussed below, the use of the Property was established as part of a shopping center and at a time when commercial parking was permitted by right on the Property. Therefore, the use was lawful when established.

1. Lee County Zoning Resolution Z-1

The Property was developed at a time when Estero Island was still part of unincorporated Lee County and was developed in accordance with the then-existing zoning ordinance, Resolution Z-1. Notably, Z-1 was less robust than current zoning codes, and therefore many terms are not defined.

The Property was zoned BU-1, which permitted a plethora of commercial uses. The BU-1 regulations stated that “no land... shall be used or permitted to be used... which is designed, arranged or intended to be used or occupied for any purpose, excepting one or more of the following uses.”¹⁰ The uses listed as permitted by right in BU-1 included “Parking Lot (Commercial).”¹¹

“Commercial” was not defined, but “commercial zone” was defined as “either business or industrial or arts and crafts use.”¹² “Business” or “place of business” were defined as “any vehicle, building, structure, yard, area, lot, premises, or part thereof, or any other place in which one (1) or more persons engage in a gainful occupation.”¹³ Therefore, commercial parking lot under Z-1 would mean a parking lot where one or more persons was engaged in a gainful occupation. Thus, the alleged violation was permitted by right when the Property was governed by Z-1, which was also the same time at which the use was established.

¹⁰ Section 10, Z-1.

¹¹ See Id.

¹² Section 2, Z-1.

¹³ Id.

The Property was developed pursuant to a site plan approved in 1975 that classified the Property's use as "Shopping and Office Center." Neither "shopping center" nor "office" was defined in Z-1. However, there are three (3) references to "shopping center" in the zoning ordinance at that time:

- Section 4(r)(2): Relief from distance requirements for liquor-beer-wine uses as part of certain uses, including "shopping centers" with ten (10) or more acres.
- Section 10: Relief from rear alley requirement for shopping centers in BU districts.
- Section 10: Allowing the imposition of additional restrictions on shopping centers containing at least 2.5 acres

While these provisions are not directly relevant, the use of this term in Z-1 denotes that there was a common understanding of what a "shopping center" was. Though there is no dispute that the overall scheme of development has always been a shopping/office center, there is potential ambiguity as to whether the surplus commercial parking use was contemplated as part of the shopping center use.

When determining the meaning of an undefined term, we can review the dictionary definitions therefor.¹⁴ Merriam-Webster defines "shopping center" as "**a group of retail stores and service establishments** usually with ample parking and usually designed to serve a community or neighborhood." Around this time, the Florida Supreme Court described shopping center uses in substantially the same way and held that the parking areas are as much a commercial use as the structures themselves.¹⁵ Thus, the commercial parking use, a "service establishment," was not only permitted by right, but was part and parcel of the shopping center use when it was established in 1980. Therefore, the use was lawful when established.

2. Lee County Zoning Ordinance 86-17

¹⁴ See *Mandelstam v. City Comm'n of City of S. Miami*, 539 So. 2d 1139 (Fla. 3rd DCA 1988).

¹⁵ See *Homer v. Dadeland Shopping Center, Inc.*, 229 So.2d 834 (Fla. 1969).

In 1986, Lee County adopted a new zoning ordinance, Ordinance 86-17. The provisions of the new LDC provided a far greater number of defined terms. One newly defined term was “shopping center,” which meant “a grouping of consumer-oriented commercial establishments, planned and developed as a single structure or under a unified architectural theme, *owned and managed as a unit*; and *providing a range of goods and services* specific to a definable market area; and *providing customer and employee parking off-street and on-site*.”¹⁶

In addition, Ordinance 86-17 provided updated parking calculations and other site development regulations. However, the new minimum parking requirements exempted “existing buildings and uses which have existing off-street parking spaces... provided there is no increase in total floor area or capacity.”¹⁷ However, existing developments were required to comply with the new parking calculations upon the occurrence of one or more of the following: (1) buildings damaged in excess of 50%; (2) enlargement of floor area for existing buildings or uses; and (3) change of building use.¹⁸ Notably, “multiple occupancy complex”¹⁹ applied a singular parking calculation versus requiring such uses, including shopping centers, to base minimum parking calculations on each specific use therein.²⁰

Notably, the required parking for the Property under Ord. 86-17 would have been 4.5 spaces per 1,000 square feet, or a total of 151 parking spaces, which is more than what was approved in the 1975 site plan. However, the County never required the Prior Owner to add additional spaces despite multiple building permits, use permits, and other approvals obtained after

¹⁶ Section 1000, Ord. 86-17.

¹⁷ Section 202.13.A.2.a, Ord. 86-17.

¹⁸ See Id.

¹⁹ “A parcel of property under one ownership or singular control, or developed as a unified or coordinated project, with a building or buildings housing more than five (5) occupants conducting a business operation *of any kind*.” Section 1000, Ord. 86-17. “Business office” was limited to “office space for the conduct of commercial activities excluding retail sales.” Id. “Business services” were “establishments primarily engaged in providing business services to other businesses and individuals, which are not classified elsewhere in this Ordinance.” Id. at Section 1000.05.

²⁰ See Section 202.13.J.5.a., Ord. 86-17.

the adoption of Ordinance 86-17. Further, there is no variance on file for this Property that would demonstrate that any change of use that would have triggered an increase in parking beyond what was approved prior to 1986. Thus, the evidence demonstrates that Lee County included the commercial parking use as part of the principal shopping center use and/or as a separate nonconforming use even after adoption of Ordinance 86-17.

3. Town of Fort Myers Beach Incorporation/Downtown Zoning District

In 1995, the Town of Fort Myers Beach was incorporated as a municipality. Thereafter, it adopted its own zoning ordinance based in part on the existing Lee County zoning ordinance. In 2003, the Town adopted Ordinance 03-03, creating the Downtown district and rezoned the Property into this district. Additionally, this ordinance adopted Section 34-2011, defining the types of parking facilities contemplated by the Town.

II. Commercial Parking Use: Single Purpose or Shared Lot?

Single-purpose parking lots “are designed to serve individual businesses, multiple-family buildings, mixed-use buildings, and multiple-occupancy complexes. Single-purpose parking lots are usually located on the same parcel as the use(s) they serve.”²¹ Such parking uses are “accessory uses.”²²

Shared parking lots “are open to the public, generally for a fee, regardless of the destination of the person parking there. Shared parking lots may be operated as a business... and may include a surface parking lot.”²³ “Permanent shared parking lots are considered a *principal use* of a parcel of land and may be approved in certain zoning districts only by special exception or through the

²¹ Section 34-2011(1)(a), LDC.

²² See Id. at subsection a.

²³ See Id. at subsection (2).

planned development zoning district procedures.”²⁴ Thus, the paid parking must be the “primary purpose for which [the Property] is used.”²⁵

However, owners of single-use parking lots *may rent surplus spaces “not in daily use” during peak periods*, subject to the limitations in Section 34-2019(a), LDC.²⁶ “Peak period” is not defined in the LDC, and could refer to daily peak periods, such as daytime hours when stores are open and people frequent the beach; weekly peak periods, such as weekends; or annual peak periods, such as “season.” Interpreted in favor of the Current Owner, peak period would include daily peak periods and would allow rental of excess spaces during those times. Accordingly, there is ambiguity as to when the rental of spaces in a private lot with a principal structure/use thereon is a single-purpose parking lot versus a shared parking lot.

Based on the attestations of the Prior and Current Owners, it appears that the use is most appropriately classified as a single-use parking lot, as the spaces for rent have been surplus spaces based on tenants’ off-hours and the number of required spaces based on actual occupancy of the structure at any given time. Such use is permitted by right and does not require any additional approval per Section 34-2019(a), LDC.²⁷

To be clear, the Current Owner purchased the Property to operate a shopping center use, which included the commercial parking element. Though the shopping center is undergoing substantial renovations, that use is still the principal use because it is the primary purpose for which the Property was intended, developed, and maintained. Therefore, the accessory parking spaces

²⁴ See Id. at subsection a. (emphasis added).

²⁵ See definition of “use, principal,” in Section 34-2, LDC.

²⁶ See Section 34-2011(1)c.

²⁷ See also Section 34-2014, stating that “a parking plan is required for all uses, except single-family and two-family dwelling units, and must be submitted for review and approval in accordance with ch. 10 of this LDC. **Developments that are not required to be approved in accordance with chapter 10 must submit plans to the director prior to issuance of a building permit.** The plan must accurately designate the required parking spaces, parking aisles, and parking lot entrance, as well as the relation of any off-street parking facilities to the uses or structures such facilities are designed to serve.”

required for retail, service, office and other permissible uses therein are reasonably classified as “single-purpose” parking with the surplus spaces not in daily use being rented out during peak periods, as permitted by the Town’s LDC.

Despite reasonable classification as “single-purpose” parking, the use is still lawful when classified as “shared parking.” The existence of the “shared parking” use, under the terms of the LDC, would be nonconforming because it was established lawfully as a commercial use within a shopping center, as discussed below.

III. Commercial Parking is Nonconforming Use

A. Definition and Application – Town LDC

The Town defines “nonconforming use” as follows:²⁸

For purposes of this division, the term "nonconforming use" means a use or activity which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to the use requirements where the property is located.

Therefore, because the commercial parking use was lawful when established in 1980 and has not been abandoned or discontinued. Absent special exception approval, the use fails to meet the standards adopted by Ordinance 03-03 but was again lawful at the time it was established, therefore rendering it a nonconforming use. The Town permits the continuance/maintenance of nonconforming uses. Therefore, continuance of the use is not a violation of the LDC.

B. Florida Law

Florida law has long recognized that “zoning regulations do not generally operate to limit the right of a landowner to continue such uses of land and structures as were in existence at the time of the adoption of the regulations, on the theory that *it would be an injustice and unreasonable hardship to compel the immediate removal or suppression of an otherwise lawful*

²⁸ Section 34-3241(a), LDC.

business or use already established in the district.”²⁹ Put another way, a local government’s zoning powers are limited related to existing lawful uses that become nonconforming uses, because the alternative would be an unreasonable exercise of its police power.³⁰

Florida law is also clear that nonconforming uses relate to the property, not its ownership, and therefore the right to maintain nonconforming uses is extended to subsequent purchasers.³¹ Therefore, the rights to continue the nonconforming use acquired by the Prior Owner transferred to the Current Owner in 2017.

Further, local governments cannot terminate a property’s lawful non-conforming use by arguing that the previous interpretation the use was lawful, was incorrect, particularly when such interpretation has been relied upon.³² When a local government leaves informal interpretations of zoning or land use policy unchallenged, those interpretations may determine which properties must be “grandfathered in” under future policy changes.³³ Where there is evidence in the record that a municipality never challenged property owners’ interpretations of its zoning rules, it may be inferred that an interpretation of local zoning restrictions--left unchallenged and relied upon over the course of a decade--may become an informal zoning policy.³⁴ Here, both Lee County and the Town tolerated the use for almost 40 years, only finding the property in violation in 2019 for the first time.

²⁹ *Fortunato v. City of Coral Gables*, 47 So.2d 321, 322-23 (Fla. 1950), citing 62 C.J.S., Municipal Corporations, § 226(19), p. 494; 58 Am. Jur., Zoning, Section 146 et seq., page 1021.

³⁰ See *State ex rel. S.A. Lyncyh Corp. v. Danner*, 33 So.2d 45, 47 (Fla. 1947).

³¹ See *City of Miami Beach v. Arlen King Cole Condominium Association, Inc.*, 302 So.2d 777, 779 (Fla. 3d DCA 1974).

³² See *Rollison v. City Of Key W.*, 875 So. 2d 659, 663 (Fla. 3rd DCA 2004); Land Use Planning & Zoning, 34 Stetson L. Rev. 887, 897–98 (2005); *Allen v. City of Key W.*, 59 So. 3d 316, 319 (Fla. 3rd DCA 2011); Stetson Law Review City, County, & Local Government Law Table of Cases for Recent Developments, 41 Stetson L. Rev. 531, 584 (2012).

³³ Stetson Law Review City, County, & Local Government Law Table of Cases for Recent Developments, 41 Stetson L. Rev. 531, 584 (2012).

³⁴ Stetson Law Review City, County, & Local Government Law Table of Cases for Recent Developments, 41 Stetson L. Rev. 531, 584 (2012).

IV. Request

To reiterate the statements and assurances made by the undersigned during the hearing, the Current Owner seeks resolution with the Town and intends to obtain a special exception to memorialize its nonconforming use. As such, we restate our request that the Special Magistrate issue an order that simply provides a reasonable time before fines begin to accrue. This will allow for full staff review, hearings, and orders with recommendations and decisions on the application from the LPA and Town Council, respectively. This intention of this request is simply to find an agreeable middle ground between the Town's desire to further regulate the Property and its uses in accordance with its current regulations, and the Current Owner's rights under both the Town's LDC and Florida law.



Amy S. Thibaut
1013569
athibaut@ralaw.com
Roetzel & Andress, LPA
2320 First Street, Suite 1000
Fort Myers, FL 33901
239.337.3850
239.337.0970
Attorneys for Respondent

CODE COMPLIANCE SPECIAL MAGISTRATE
FOR THE TOWN OF FORT MYERS BEACH

**TOWN OF FORT MYERS BEACH,
FLORIDA,**

CASE NO. 20240249

Petitioner,

vs.

KEY ESTERO SHOPS, LLC,

Respondent.

APPENDIX TO RESPONDENT'S BRIEF

LIST OF EXHIBITS:

Exhibit A – Key Estero Site Plan (1975)

Exhibit B – Deeds to Prior Owner

Exhibit C – Affidavits of Prior and Current Owners

Exhibit D – Deed to Current Owner



Amy S. Thibaut
1013569
athibaut@ralaw.com
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2320 First Street, Suite 1000
Fort Myers, FL 33901
239.337.3850
239.337.0970
Attorneys for Respondent

EXHIBIT A

Key Estero Site Plan (1975)

Page 196 of 328

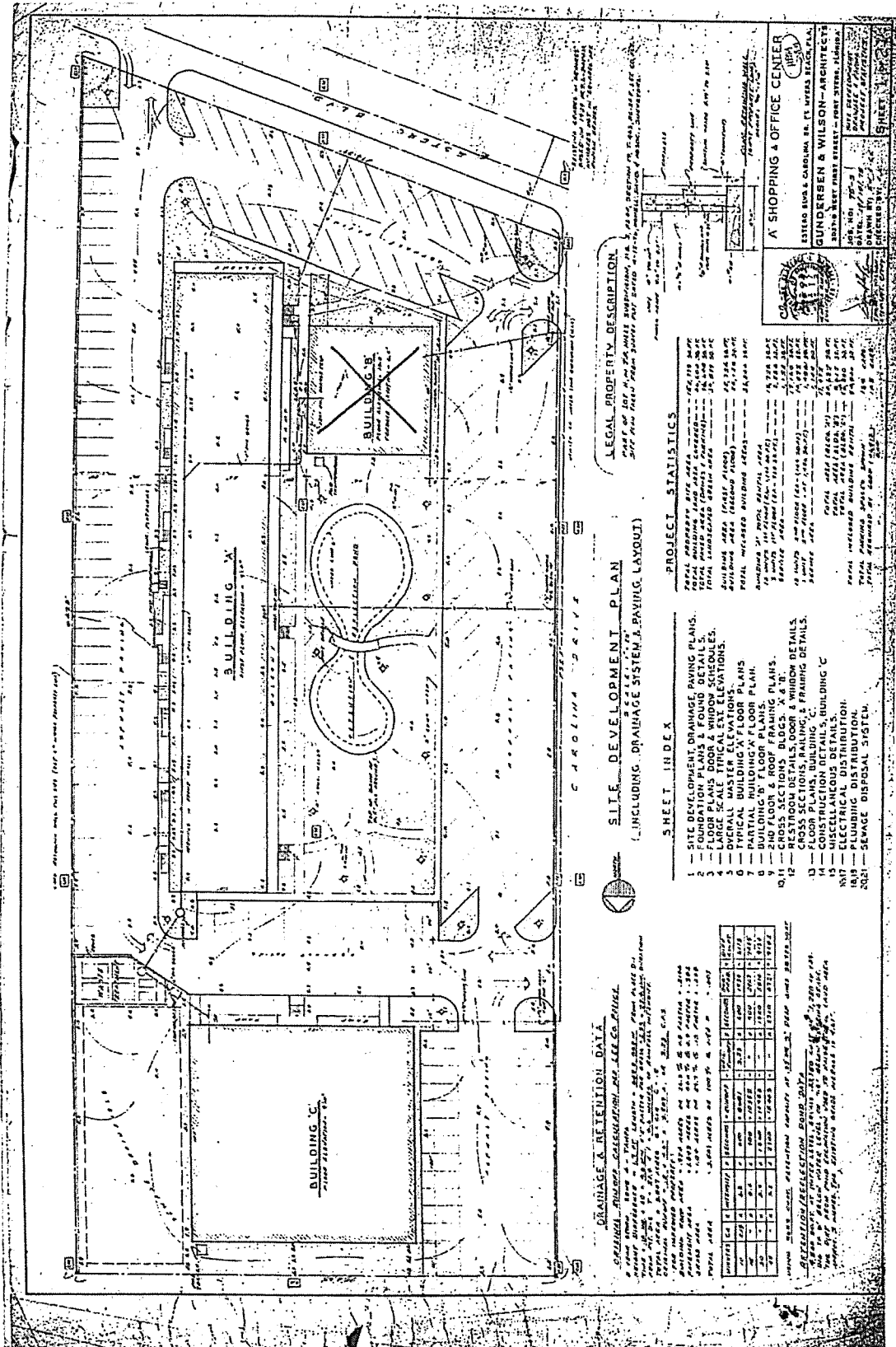


EXHIBIT B

PRIOR OWNER DEEDS

This instrument prepared by:
HARVEY B. GOLDBERG, Esq.
P. O. Box 2366
Fort Myers, Florida 33902

WARRANTY DEED

1367504

THIS INDENTURE, made this 18th day of November, 1980, BETWEEN

ESTERO ISLAND, LTD., a Florida limited partnership
of the County of Lee, State of Florida, Grantor, and

OFF. REC. 1468 PG 1697

KEY ESTERO, LTD., a Florida limited partnership
whose address is: 1600 Estero Boulevard, Fort Myers Beach, FL 33931
of the County of Lee, State of Florida, Grantee.

WITNESSETH, that said Grantor, for and in consideration of the sum of
TEN (10.00) DOLLARS, and other good and valuable considerations
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 Grantees heirs and assigns forever, the following described land,
situate, lying and being in LEE County, Florida, to-wit:

A tract or parcel of land lying in Lot 11, T.P. HILL'S
SUBDIVISION, as recorded in Plat Book 3 at page 84, of the
Public Records of Lee County, Florida, described as follows:
BEGIN at a concrete monument marking the Southeast corner
of said Lot 11; thence run N 68° 52' 30" W. along the
Northerly R/W of Estero Boulevard, a distance of 274.39' to
the Easterly R/W of Carolina Ave.; thence run N 1° 00' E.
along said Easterly R/W, a distance of 652.21'; thence run
S 89° 16' E., a distance of 254.16' to the Easterly line of
said Lot 11, thence run S 0° 44' W., a distance of 747.81'
to the Point of Beginning. *

Subject to easements, restrictions and reservations of record.
and said Grantor does hereby fully warrant the title to said land, and
will defend the same against the lawful claims of all persons whomsoever.
IN WITNESS WHEREOF, Grantor has hereunto set Grantors hand and seal the
day and year first above written.

ESTERO ISLAND, LTD.

Barth S. Rubenstein
Therese Cronin
Robert C. Buckley
John N. Santini

(Witnessed as to all parties)

Donald M. Call
General Partner
John N. Santini
General Partner
Robert C. Buckley
General Partner
John N. Santini
General Partner
John N. Santini
General Partner

Swor and Santini, Inc. joins in this conveyance by and through its
duly authorized President.

John N. Santini
John N. Santini, President

Page 1 of 2

OFF. 1468 1698
REC.

STATE OF FLORIDA)

COUNTY OF LEE)

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared Douglas S. McCall, John Lopez, H. Quillian Jones, Jr., M.D., John Santini and David W. Swor to me known to be the persons described in and who executed the foregoing instrument and acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 18th day of November, 1980.

My Commission Expires:

Theresa Cronin
Notary Public

(Notary Seal)

4-1-84

STATE OF FLORIDA)

COUNTY OF LEE)

I HEREBY CERTIFY, that on this 18th day of November, 1980, before me personally appeared JOHN N. SANTINI, President of SWOR & SANTINI, INC., a corporation under the laws of the State of Florida, to me known to be the person described in and who executed the foregoing conveyance to Key Estero, Ltd. and duly acknowledged the execution thereof to be his free act and deed as said officer, for the uses and purposes therein mentioned; and that he affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Fort Myers and the County and State above named, the day and year last aforesaid.

Theresa Cronin
Notary Public

My Commission Expires:

4-1-84

* Being those same parcels as described in that certain Quit Claim Deed by John N. Santini, David W. Swor, Harris Quillian Jones, Jr. and Douglas S. McCall, individually and as Trustees to Estero Island, Ltd., a Florida limited partnership, as recorded in O.R. Book 1140 at pages 1788 - 1789, and that certain Warranty Deed from John Santini, individually and as Trustee, to Estero Island, Ltd., a Florida limited partnership, recorded in O.R. Book 1235 at pages 1620 - 1621, both of the Public Records of Lee County, Florida.

OFF. 1458 11699
REF

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11417

Nov 19 4 39 PM '80
HE. AL
LEE C. J.
RECEIVED
CLERK OF COURT

SAL. G. BAC
CLERK OF COURT

RETURN TO: ✓
Douglas L. Waldorf
P. O. Drawer 1000
Fort Myers, Florida 33902

2195336

Prepared without
title examination.

WARRANTY DEED

THIS INDENTURE, made this 13 day of November, 1986,
between KEY ESTERO, LTD., A FLORIDA LIMITED PARTNERSHIP, Grantor*,
and BEATE ROTERMUND, INC., A FLORIDA CORPORATION, Grantee*, whose
Post Office address is 1600 Estero Boulevard, Fort Myers Beach,
Florida 33931.

WITNESSETH, That said Grantor, for and in consideration of
the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and
valuable considerations 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, all of their right, title and interest in and to
the following described land, situate, lying and being in Lee
County, Florida, to-wit:

A tract or parcel of land lying in Lot 11, T.P. HILL'S
SUBDIVISION, as recorded in Plat Book 3 at page 84, of the
Public Records of Lee County, Florida, described as follows:
BEGIN at a concrete monument marking the Southeast corner
of said Lot 11; thence run N 68° 52' 30" W. along the
Northerly R/W of Estero Boulevard, a distance of 274.39' to
the Easterly R/W of Carolina Ave.; thence run N 1° 00' E.
along said Easterly R/W, a distance of 652.21'; thence run
S 89° 16' E., a distance of 254.16' to the Easterly line of
said Lot 11, thence run S 0° 44' W., a distance of 747.81'
to the Point of Beginning.

SUBJECT TO existing mortgages, liens, encumbrances, leases,
easements, restrictions and reservations of record and taxes
for the calendar year 1986 and all subsequent years.

AND SAID Grantor does hereby fully warrant title to said
land, and will defend the same against the 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 his hand and
seal the day and year first above written.

Signed in the presence of:

KEY ESTERO, LTD., A FLORIDA
LIMITED PARTNERSHIP

BY: BEATE ROTERMUND, INC.,
A FLORIDA CORPORATION, AS
GENERAL PARTNER

Patricia Hare

Mary A. Currier

BY: Leonard J. Lucas
LEONARD J. LUCAS, as
Vice President

RECORD VERIFIED - GRANTOR'S COPIES, CLERK
BY: G. SHERWOOD, DE

Documentary Tax \$ 50
CHAS. W. KELLY, CLERK
LEE COUNTY
Deputy Clerk

OFF
REC 1885PG2397

STATE OF FLORIDA

COUNTY OF LEE

Execution of the foregoing instrument was acknowledged before me by LEONARD J. LUCAS, as Vice President of BEATE ROTERMUND, INC., A FLORIDA CORPORATION, as General Partner of KEY ESTERO, LTD., A FLORIDA LIMITED PARTNERSHIP, as the act and deed of said general partner for and on behalf of the said limited partnership, this 13 day of November, 1986.

Mary A. Quisenberry
NOTARY PUBLIC

My commission expires:

Notary Public, State of Florida

My Commission Expires Jan. 14, 1988
(Expiration Date)

(Notary Seal)

Prepared by:

Charles R. Meador, Jr.

P. O. Drawer D

Fort Myers Beach, FL 33931

RECORDED AND RECORDED
Dec 15 3 59 PM '86
LEE COUNTY FLA

EXHIBIT C

Affidavits of Use – Prior and Current Owners

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF Lee)

BEFORE ME, the undersigned authority, on this 29th day of October, 2019, personally appeared YVONNE LUCAS, who is personally known to me or who produced Florida Driver's License as identification, who did take an oath, and who deposes and says as follows:

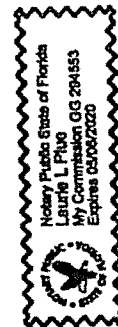
1. Affiant is providing this affidavit regarding the property located at 1661 Estero Boulevard, Fort Myers Beach, Florida, ("Key Estero Property") currently owned and operated by Key Estero Shops, LLC.
2. Affiant was an officer (Secretary) of Beate Rotermund, Inc., previously known as Key Estero Ltd., former owner of the Key Estero Property.
3. Key Estero Ltd. purchased the Key Estero Property in 1980, and at that time, the standard practice of renting surplus parking spaces had been well established. Key Estero Ltd. continued this daily practice without interruption by renting spaces on weekends, holidays and for special events. There was never a nine (9) month interruption of this parking space rental practice from 1980 through 2001.
4. Affiant has personal knowledge that the management companies of Key Estero Shops (along with occasional outside companies) monitored the number of parking spaces available for rent to make sure the tenants had the requisite amount of parking for their businesses.
5. Affiant was the selling real estate agent in 2017 when the Key Estero Property was sold to its current owner, Key Estero Shops, LLC.

FURTHER AFFIANT SAYETH NAUGHT.

Yvonne M. Lucas
YVONNE LUCAS, Affiant

The foregoing instrument was acknowledged before me this 29th day of October, 2019, by Yvonne Lucas. She is personally known to me or has produced Florida Drivers License as identification.

(Notary Stamp)



Notary Public

Print Name: LAURIE L. PLUE



www.PavesesLaw.com

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF LEE)

BEFORE ME, the undersigned authority, on this 7th day of November, 2019, personally appeared CARMEN NACCARATO, who is personally known to me or who produced as identification, who did take an oath, and who deposes and says as follows:

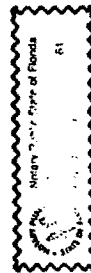
1. Affiant is providing this affidavit regarding the property located at 1661 Estero Boulevard, Fort Myers Beach, Florida, ("Key Estero Property") currently owned and operated by Key Estero Shops, LLC.
2. Affiant is the manager of Key Estero Shops, LLC, owner of the Key Estero Property.
3. Key Estero Shops, LLC purchased the Key Estero Property from Key Estero Ltd. in 2017, and at that time, the standard practice of renting surplus parking spaces had been well established, and having that continuing source of income to fund the maintenance and security of the parking lot was an important reason that the property was purchased. Key Estero Shops, LLC continued this daily practice without interruption by renting spaces on daily, weekends, holidays and for special events. There was never a nine (9) month interruption of this parking space rental practice after Key Estero Shops, LLC purchased the Key Estero Property.
4. Affiant has personal knowledge that the parking lot has been, and is being, monitored for the number of parking spaces available for rent to make sure the tenants have the requisite amount of parking for their businesses and that beach goers and other Town visitors do not fill up the parking lot so that tenants' customers and clients are unable to find adequate parking spaces.

FURTHER AFFIANT SAYETH NAUGHT.

Carmen Naccarato
CARMEN NACCARATO, Affiant

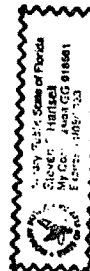
The foregoing instrument was acknowledged before me this 7th day of November, 2019, by Carmen Naccarato. He is personally known to me or has produced as identification.

(Notary Stamp)



Notary Public

Print Name: Steven C. Hubbard



**Affidavits: Yvonne Lucas
And Carmen Naccarato**

EXHIBIT D

Deed to Current Owner

After Recording Return To:
Mandy Schutt FRP
Schutt Law Firm, P.A.
12601 New brittany Blvd.
Fort Myers, FL 33907

This Instrument Prepared by:
Mandy Schutt FRP
Schutt Law Firm, P.A.
12601 New Brittany Blvd.
Fort Myers, FL 33907

as a necessary incident to the fulfillment of conditions
contained in a title insurance commitment issued by it.

Property Appraisers Parcel I.D. (Folio) Number(s):
19-46-24-W4-00402.0010
File No.: 1610020

WARRANTY DEED

This Warranty Deed, made the 1st day of March, 2017, by **Beate Rotermund, Inc., a Florida Corporation**, hereinafter called the grantor, whose post office address is: 3333 Renaissance Blvd., Suite 213, Bonita Springs, FL 34134, to **Key Estero Shops, LLC, a Michigan Limited Liability Company**, whose post office address is: 3220 Pine Cone Court, Milford, MI 48381, hereinafter called the grantee,

WITNESSETH: That said grantor, for and in consideration of the sum of \$3,990,000.00 Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Lee County, Florida, to wit:

A tract or parcel of land lying in Lot 11, T.P. HILL'S SUBDIVISION, as recorded in Plat Book 3 at page 84, of the Public Records of Lee County, Florida, described as follows:

BEGIN at a concrete monument marking the Southeast corner of said Lot 11; thence run N 68° 52' 30" W. along the Northerly R/W of Estero Boulevard, a distance of 274.39' to the Easterly R/W of Carolina Ave.; thence run N 1° 00' E. along said Easterly R/W, a distance of 652.21'; thence run S 89° 16' E., a distance of 254.16' to the Easterly line of said Lot 11, thence run S 0° 44' W., a distance of 747.81' to the Point of Beginning.

LESS AND EXCEPT the North 275 feet as described in Official Record Book 1781 at Page 3018.

The property is not the homestead of the Grantor(s).

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to 2016, reservations, restrictions and easements of record, if any.

(The terms "grantor" and "grantee" herein shall be construed to include all genders and singular or plural as the context indicates.)

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal the day and year first above written.

SIGNED IN THE PRESENCE OF THE FOLLOWING WITNESSES
TWO SEPARATE DISINTERESTED WITNESSES REQUIRED

Witness Signature: [Signature]
Printed Name: Darwin L. Schutt

Witness Signature: [Signature]
Printed Name: Yvonne H. Lucas

BEATE ROTERMUND, INC.
[Signature]
Ulrich Rotermund
President

State of Florida
County of Lee

The foregoing instrument was acknowledged before me this 1st day of March, 2017 by Ulrich Rotermund as President of Beate Rotermund, Inc., a Florida Corporation on behalf of said entity. He is personally known to me or has produced German Passport as identification.

My Commission Expires: [Signature]
Notary Public Signature
Printed Name: Nichole L. Grimes
Serial Number



EXHIBIT K

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

**TOWN OF FORT MYERS BEACH,
FLORIDA,**

Petitioner,

CE No. 2024-40249

vs.

KEY ESTERO SHOPS, LLC,

Respondent.

**PETITIONER TOWN OF FORT MYERS BEACH, FLORIDA’S
REPLY TO KEY ESTERO SHOPS, LLC RESPONDENT’S BRIEF**

Petitioner Town of Fort Myers Beach (“the Town”) files this Reply in response to Respondent’s Brief filed by Key Estero Shops, LLC (“Key Estero”) with the Town Clerk on August 16, 2024 as authorized by the Special Magistrate’s Order Continuing Hearing, Partial Findings and Conclusions of Law, dated August 6, 2024 (“the August 6, 2024 Order”). The Town’s Reply will also provide additional response to the affirmative defenses and matters raised in a PowerPoint presentation by Key Estero’s attorney during the August 6, 2024 Special Magistrate hearing, which has been accepted into the record.

ARGUMENT:

In the PowerPoint presentation by its attorney and in its Respondent’s Brief, Key Estero raised several affirmative defenses, some of which are repetitive and others which do not appear relevant, are without merit or remain unsupported by any competent and substantial evidence. Key Estero’s primary affirmative defense is an argument that it can legally engage in and operate a “commercial parking lot/shared parking” because “commercial parking/shared parking” is a legal

nonconforming use. Key Estero argues that it has a past practice of doing so without approval of the Town. Engaging in a past practice or act that is unlawful, does not make the past practice or act lawful.

Section 34-3241(a) of the Fort Myers Beach Land Development Code defines a “nonconforming use” as “a use or activity which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to the use requirements where the property is located.” Based on past practice, Key Estero alleges it has a lawful nonconforming use. However, Section 34-3203 provides guidance of when a nonconforming use is an illegal nonconforming use and states:

Illegal buildings, uses and lots. “if a building, use or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming, but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses or lots.”

In the Notice of Violation dated March 18, 2024, Key Estero was cited for operation of an illegal use on the Property, i.e. “the operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit” in violation of Section 34-3203. Key Estero has not presented competent and substantial evidence in this case to support its claim that it can legally operate a commercial parking lot or shared parking without approval of a special exception.

1. **1975 Site Plan**. The Key Estero PowerPoint contained a 1-page copy of a 1975 illegible site plan for a shopping and office center. Key Estero has now included a legible 3-page copy of the site plan marked as Exhibit A in its Brief. The additional pages of the 1975 site plan do not provide any additional relevant evidence for the record in this case. There is no indication of any

approval from Lee County to use the property for a commercial parking lot or for shared parking. From Lee County. The site plan requires 135 parking spaces for the shopping and office center. Neither the 1-page site plan in the PowerPoint nor the 3-page site plan in Exhibit A constitute competent and substantial evidence to establish a prior permitted use of the property for a commercial parking lot or shared parking by Lee County.

2. **Affidavits from Lucas/Naccarato.** The Key Estero PowerPoint contained a copy of an affidavit from Yvonne Lucas and Carmen Naccarato, in support of a claim that the Key Estero property was used for paid parking since 1980. Copies of the same affidavits are included as Exhibit C in Key Estero's Brief and do not provide any additional evidence that is not already included in the record.

In her affidavit, Ms. Lucas attests she was the Secretary of Beates Rotemund, Inc., a prior owner of the property, and that she was also the real estate agent who sold the property to Key Estero in 2017. She alludes to a "standard past practice" of renting surplus parking spaces as being well established and that there was never a 9-month interruption of this parking space rental practice from 1980 through 2001. Ms. Lucas' affidavit is not relevant to the code violation in the instant case finding a repeat violation on March 18, 2024 of the same code violation adjudicated in 2020.

Carmen Naccarato is the manager of Key Estero Shops, LLC. Mr. Naccarato asserts in his affidavit that rental of surplus parking spaces was an important reason the property was purchased in 2017. Mr. Naccarato's affidavit is dated November 7, 2019. His statements are not relevant to the repeat code violation in the instant case, which occurred on March 18, 2024. This current code enforcement case is not an opportunity to relitigate claims made and rejected in the 2019 code enforcement case and elsewhere as will be further discussed in this Reply. The matter before the

Special Magistrate in this case concerns a repeat violation of Section 34-3203 of the Town's Land Development Code observed on March 18, 2024 by the Town's Code Enforcement Officer. The prior code enforcement violation was adjudicated in 2020 and the resulting lien paid in 2024. Lastly, Mr. Naccarato's affidavit on its face is self-serving and is not competent and substantial evidence to establish that Key Estero could lawfully operate a commercial parking or shared parking without a permit, i.e. special exception approval on March 18, 2024.

3. **Commercial Lot as a Matter of Right**. In the Key Estero PowerPoint, Key Estero asserts that its ability to park cars was a use established as a matter of right in 1980 by the Lee County Code of Ordinances. In support of this claim, Key Estero argues that in 1980 its property was zoned BU-1 under the Lee County Zoning Code and operation of a commercial parking lot was a use permitted by right. Key Estero claims the use was not abandoned or discontinued.

In support of its argument, Key Estero included an illegible copy of a document purported to be an excerpt from the Lee County Zoning Code in its PowerPoint and cites to several Lee County Codes, but does not include a copy of the actual zoning regulations referenced as Resolution Z-1 and Ordinance 86-17 in its Brief for the Special Magistrate's review in this case.¹

There is no dispute that the Town of Fort Myers Beach was incorporated in 1995. See Town's Exhibit A. Under Florida law, a county's land use regulations may apply to a municipality within its geographic boundary, including cities that are newly formed, depending on whether the county operates under a charter or is a non-charter county.

Lee County is a charter county. See Exhibit B. Charter counties have broad home-rule powers, which include the ability to enact county ordinances that can preempt conflicting municipal ordinances if the county charter so provides as established under Article VIII, Section

¹ A copy of these Lee County Code references was located by the Town and are included in the Town's Exhibit C as part of Key Estero's nonconforming use case before the LPA.

1(g) of the Florida Constitution. However, Section 1.4 of the Lee County Charter provides that “[m]unicipal ordinances shall prevail over County ordinances to the extent of any conflict.” Therefore, until the Town enacted its zoning code in 2003, the Key Estero property was regulated by Lee County zoning regulations.

When the Town adopted its zoning regulations in 2003, Key Estero claims that a conflict between an alleged zoning regulation permitting a specific use by right in the Lee County Code and the Town’s Land Development Code was created. As a result, it became Key Estero’s burden to provide evidence to the Town that its commercial parking/shared parking use was a lawful use under the Lee County Code and a legal nonconforming use under the Town’s Land Development Code, but it has failed to do so. Instead, Key Estero continues to operate an illegal use under the Town’s Land Development Code. There is no competent and substantial evidence in the record to establish that use of the Key Estero property as a commercial lot/shared parking was a legal use under the Lee County Code. Key Estero has failed to satisfy its burden to prove its asserted affirmative defense. The lack of evidence does not create ambiguity in the provisions of a zoning code. Key Estero was a violator of Section 34-3203 of the Town’s Land Development Code in 2019 and again in this case.

4. **Collateral Estoppel and Administrative Res Judicata**. In the Key Estero PowerPoint, Key Estero presents information that there were two previous cases in which argument was made that Key Estero’s commercial parking /shared parking use was a lawful nonconforming use. In fact, Key Estero made the same argument as in this case in four (4) different matters and failed to prevail on its claim in each of them.

a. **Town of Fort Myers Beach Local Planning Agency**. On November 15, 2019, Key Estero requested review of evidence to establish that its commercial parking lot with paid parking per

space is a legal nonconforming use before the Town of Fort Myers Beach Local Planning Agency (“LPA”). On December 10, 2019 a public hearing was held before the LPA as item V-1. LPA Chair Heil moved that from the “findings and testimony, commercial parking was not consistent with a lawfully non-conforming use of the property at 1661 Estero Blvd.” His motion was seconded by LPA Member Atterholt and the motion was passed by a vote of 6-1 with LPA Member Plummer dissenting. LPA Member Hughes felt that even if they had legal non-conforming use, they lost their use under Section 34-3242(a).² Exhibit C is a copy of the minutes and agenda materials from the December 10, 2019 LPA meeting at which Key Estero’s argument was reviewed and rejected. Exhibit C contains some of the same evidence that is currently presented in this 2024 code enforcement case. After **the LPA’s rejection** of Key Estero’s arguments, the matter was scheduled for further review by the Town Council.

b. **Non-conforming Petition to the Town Council.** On January 21, 2020, the Town Council reviewed Key Estero’s request for a finding that its commercial parking lot/shared parking lot was a lawful nonconforming use as item X-C on its agenda. **The Town Council rejected Key Estero’s claim.** Exhibit D is a copy of the minutes of the January 21, 2020 public hearing at which Key Estero’s argument was reviewed and rejected. Interestingly, Key Estero’s attorney argued that payment for parking spaces was the essence of a commercial parking lot. The minutes reflect that Key Estero knew it needed to obtain a special exception to operate a parking lot but intentionally chose not to do so. The January 21, 2020 agenda materials are attached as Exhibit E and contain some of the same evidence that is currently filed in this code enforcement case.

² Section 34-3242(a) of the Town’s Land Development Code provides “No such nonconforming use shall be extended or enlarged: (1) By having any buildings or structures replaced or expanded in physical size; or (2) By any increase in land or water area devoted to the nonconforming use; or (3) By any increase in the size or number of vehicles and boats, or increase in the capacity of services such as parking lots that would expand the operation of the nonconforming use.

c. Code Enforcement Case CE 19-0026. On January 30, 2020 a public hearing was held before the Special Magistrate in CE 19-0026. The Notice of Violation issued to Key Estero in CE 19-0026 was for operating a parking lot without a permit, the same as in the instant case. Mr. Naccarato representing Key Estero argued that his commercial parking/ shared parking was a legal nonconforming use. **The Special Magistrate rejected Key Estero's argument** and issued her Code Enforcement Order on February 6, 2020 and an Amended Code Enforcement Order on September 17, 2020. The February 6, 2020 Order by the Special Magistrate found Key Estero in violation of Section 34-3203 of the Town's Land Development Code. Exhibit F is a copy of the transcript of the January 30, 2020 code enforcement hearing and Exhibit H is a copy of the documents in the record for case CE 19-0026 issued by the Special Magistrate. The Special Magistrate's September 17, 2020 Order was to correct a scrivener's error in the legal description of the February 6, 2020 Order. The Special Magistrate also issued an Order imposing a lien on Key Estero's property on September 17, 2020.

d. Lee County Circuit Court Case No. 20-CA-6312. Key Estero filed an appeal of the Special Magistrate's September 17, 2020 Order in CE 19-0026, but proceeded to present argument to the Court regarding the Special Magistrate's February 6, 2020 Order based on the same arguments that it had made to the LPA, Town Council and Special Magistrate, i.e. its operation of a commercial parking lot/shared parking was a legal nonconforming use. In its September appeal, Key Estero included the transcript of the January 30, 2020 Code Enforcement Hearing instead of a transcript of the September 17, 2020 Special Magistrate Hearing, as well as many of the documents previously provided to the LPA, the Town Council, the 2019 Special Magistrate and again in this code enforcement case.

Key Estero asserts that the Court dismissed its appeal with prejudice simply on procedural grounds as an untimely filing without any review of the merits.³ However, in rendering its decision the Court made a finding that the errors alleged in the appeal “would have been made in relation to ... [the Special Magistrate’s] order entered on February 6, 2020, following the January 30, 2020 hearing. The entrance of an amended order correcting a scrivener’s error and an order imposing a lien did not grant Appellant a second opportunity to appeal the ... [Special Magistrate’s] decision made six months earlier.” The Court also explained in its ruling that “[w]hat the landowner should have done to challenge the order finding the code enforcement violation was appeal the final order within thirty days after it was originally entered.” The Court cited to *City of Fort Lauderdale v. Bamman*, 519 So.2d 37 (Fla. 4th DCA 1987) and *Hardin v. Monroe Cty.*, 64 So.3d 707 (Fla. 3rd DCA 2011), which were also code enforcement cases in which a property owner attempted to appeal the merits of a prior order when a supplemental order had been issued.

Practically speaking, Key Estero’s improper filing of the appeal of the February 6, 2020 Special Magistrate Order within 30 days, rendered the Court without jurisdiction to review the merits of the claims. A court has authority to dismiss an appeal as a sanction upon a determination of willful or intentional noncompliance with court rules. *Commonwealth Fed. Sav. Loan Ass’n v. Tubero*, 369 So. 2d 1271 (Fla. 1990). As a result, the February 6, 2020 Order became a non-appealable final determination of the merits of Key Estero’s argument and the **Court correctly rejected** Key Estero’s arguments on appeal.

³ A dismissal with prejudice is a final judgment in a trial court that permanently dismisses a case and prevents it from being brought back to the same court. Key Estero could have appealed the Court’s Order dismissing the case to the Second District Court of Appeal for further review but did not.

It is worthy to note under Florida law a court does have discretion to review an untimely appeal if the court believes that the untimely appeal had merit or because public policy favored such consideration since Florida courts generally favor deciding controversies on their merits. *Gillespie v. City of Destin*, 946 So. 2d 1195 (1st DCA 2007). This principle is rooted in public policy, which disfavors dismissals solely based on procedural matters, especially in administrative matters where parties may be unrepresented by legal counsel. However, in this case the Court did not exercise this opportunity. Moreover, although Key Estero had the opportunity to appeal the Court's Order, which it chose not to do, it instead decided to intentionally continue to engage in the illegal use of its property, from the date of the Court's Order to the date of compliance in CE 19-0026, which was September 28, 2022.

Collateral estoppel and administrative res judicata are related legal doctrines that are relevant and applicable to Key Estero's arguments raised in this code enforcement case. These legal doctrines prevent the relitigating of issues or claims that have already been decided. Collateral estoppel focuses on preventing the relitigating of specific issues that have been previously adjudicated by different entities. Administrative res judicata bars the relitigating of entire claims or causes of action that have been or could have been raised in prior proceedings. Both doctrines aim to promote judicial economy and finality in legal and administrative processes. *Trucking Employees of North Jersey Welfare Fund, Inc. v. Romano*, 450 So. 2d 843 (Florida 1984); *Pelphrey-Weigand v. Weigand*, 283 So. 3d 822 (Fla 2nd DCA 2019).

More specifically, collateral estoppel prevents identical parties from relitigating the same issues that have already been decided in a prior proceeding. The essential elements of collateral estoppel in a code enforcement case, as in other legal contexts, require the following elements to be met: (1) an identical issue must have been presented in the prior proceeding; (2) the issue must

have been a critical and necessary part of the prior determination; (3) there must have been a full and fair opportunity to litigate that issue; (4) the parties in the two proceedings must be identical; and (5) the issues must have been actually litigated. Lambert.

The Town Council's decision on January 21, 2020 was a final appealable order regarding the issue. In the instant case, Key Estero is collaterally estopped from raising the same arguments in this code enforcement case that it raised during the public hearings before the LPA and the Town Council, i.e. a determination that the use of its property for a commercial or shared parking lot is a legal non-conforming use. Key Estero's arguments were critical and necessary before the LPA and Town Council, as well as in the instant case, to substantiate that its property was and remains a legal non-conforming use. Key Estero was afforded a fair opportunity to present its arguments before the LPA and the Town Council. No additional parties had an interest in the decision of the LPA or the Town Council except for Key Estero and the Town. The final decisions by the Town Council and the LPA addressed the merits of Key Estero's arguments.

Similarly, Key Estero is barred from raising the same arguments in the instant case that it raised during the prior code enforcement hearing and on appeal to the Circuit Court by the doctrine of administrative res judicata. The doctrine of administrative res judicata applies the principles of res judicata within the context of administrative proceedings and, like collateral estoppel, prevents the relitigating of claims that were or could have been raised in a prior action between the same parties based on the same cause of action. Administrative res judicata has been applied cautiously to rulings or decisions by administrative bodies, including those dealing with zoning regulations. *Marell v. Hardy*, 450 So. 2d 1207 (Fla. 4th DCA 1984); *City of Miami Beach v. Prevatt*, 97 So. 2d 473 (Fla. 1957). Administrative res judicata will apply only if the second application is not supported by new facts, changed conditions, or additional submissions by the applicant, which

substantially change the facts in the case in a manner that is sufficient to prompt a different or contrary determination. *Thomson v. Department of Environmental Regulation*, 511 So. 2d 989 (Fla. 1987), *Emiddio v. Fla. Office of Fin. Regulation*, 147 So. 3d 587. The determination of whether a significant change in circumstances has occurred lies primarily within the discretion of the reviewing administrative official or agency. *Emiddio*.

Administrative res judicata requires sameness of the: 1) identity of the thing sued for; 2) the identity of the cause of action; 3) the identity of the parties; and 4) the identity of the quality or capacity of the parties. *Romano; Weigand*. The finding of a violation in the instant case as a repeat violation is consistent with the application of the doctrine of administrative res judicata and bars Key Estero from raising its argument regarding a legal nonconforming status of its illegal use based on the same argument that was presented in CE 19-10026 without any new facts, changed conditions, or additional evidence. In flagrant disregard of the determination of illegality in the prior code enforcement proceeding and apparently ignoring the fact that the prior violation resulted in a payment of \$188,475.00, Key Estero continues to engage in and repeat its illegal conduct that is the subject matter of the instant case. Key Estero knows its use of the property as a commercial or shared parking lot is illegal, but because it results in a profit to pay its expenses, decides that it is ok to continue to violate the Town's Land Development Code. As the evidence in the instant case shows when caught, Key Estero repeatedly makes the same losing arguments over and over again in defense of its illegal activity, while other property owners apply for the necessary approvals to legally operate commercial parking lots. Key Estero has known since 2019, if not before, that its use under review in this case, was and is illegal under the Town's Land Development Code.

5. **Laches**. Furthermore, contrary to Key Estero's allegation, the Town is not barred from maintaining this code enforcement action by laches. The doctrine of laches applies "to bar a claim based not upon the number of years which have elapsed between the accruing of rights and the assertion of them, but upon unreasonable delay in enforcing a right, coupled with a disadvantage to the person against whom the right is sought to be asserted." *Peacock v. Firman*, 177 So. 2d 560 (Fla 3rd DCA 1965). In *Peacock*, the Court further explained that the "test in determining whether laches exists is whether the delay has resulted in injury, embarrassment, or disadvantage to any person, and particularly to the person against whom the relief is sought. Furthermore, laches is an affirmative defense. As such, the burden of proving it is on those who assert it, and it must be proved by very clear and positive evidence." Here, the burden is on Key Estero to provide laches as a defense. Key Estero has not demonstrated that the Town's delay in bringing this code enforcement case has caused it injury, embarrassment or disadvantage. This is simply not the case. There is no competent and substantial evidence to support this affirmative defense. In fact, Key Estero continues to benefit by any delay in adjudication of the code violation in the instant case as it continues to illegally operate a commercial parking and shared parking lot.

Key Estero's statement that the Town has tolerated Key Estero's use for almost 40 years, only to find the property in violation in 2019 for the first time is simply insulting. The Town has not delayed in bringing forth this code enforcement case based on a repeat violation from Key Estero's 2019 violation. The 2019 violation was brought into compliance on September 28, 2022, only as a result of Hurricane Ian because Hurricane Ian allowed for clear documentation that the illegal use had stopped due to the impossibility of operating a commercial/ shared parking lot in the aftermath of Hurricane Ian. Subsequent to a finding of compliance, Key Estero paid its

outstanding 2019 lien, which was already in foreclosure. Once the prior lien was paid, the Town proceeded with issuance of the Notice of Violation in this case as a repeat violation.

In view of the immediate recovery efforts needed in the aftermath of Hurricane Ian and the subsequent demand for redevelopment, any lapse of time or delay by the Town in presenting this code enforcement case is not unreasonable in view of the circumstances. Moreover, whether to issue or not issue a Notice of Violation remains a discretionary function performed by a local government. As stated above, Key Estero has not been harmed by any delay by the Town in issuing the Notice of Violation in this case.

More important to note is that since the August 6, 2024, special magistrate hearing, the Town has not received notice that 1) Key Estero has stopped operating its property as a commercial parking/ shared parking lot; or 2) contrary to Key Estero's claim in its PowerPoint presentation, completed its application for a special exception to permit shared parking. As of the date of filing of this Reply, a completed special exception application has not been submitted to the Town's portal for review. Any delay in obtaining compliance regarding the March 18, 2024 violation is due to a failure to act on the part of Key Estero. Rather than taking action to remedy the violation, Key Estero continues to unlawfully operate a commercial parking/ shared parking lot. The Town will present evidence of Key Estero's continued illegal use of the property in the agenda materials at the September 5, 2024 hearing for the Special Magistrate's consideration.

7. **Remaining Arguments**. The Town finds no relevance or merit in Key Estero's claims regarding a taking, retroactive application of a special exception, loss of a non-conforming use due to a change in ownership or any violation of Section 715.075(1)(a), Florida Statutes, related to motor vehicle parking rules and rates. The excerpt from the Lee County Code containing the words "Parking Lots (Commercial)" does not on its face appear to be ambiguous. Regardless, there is an

obvious difference between an interpretation of an ambiguous zoning code in favor of a property owner and application of a zoning code to a property owner without any evidence of required permits or approval to engage in the use authorized by the zoning code.

Moreover, should Key Estero obtain a special exception from the Town Council, it will not memorialize or exonerate Key Estero from its past illegal use as suggested in the Respondent's Brief. The special exception would only permit a shared parking use on the Key Estero property if it is approved and in compliance with Section 34-2011(2) of the Town's Land Development Code and not a "Parking Lot (Commercial)" as may have been authorized under the Lee County Code. The Town Council has the authority to approve a special exception for shared parking subject to conditions, including but not limited to further compliance with American with Disabilities Act, setbacks, landscaping, etc.. Section 34-2011(2) of the Town's Land Development Code defines "shared parking lots" as "open to the public generally for a fee, regardless of the destination of the person parking there. Shared parking lots may be operated as a private business or by a governmental entity, and may include a surface parking lot and/or a parking garage." ⁴

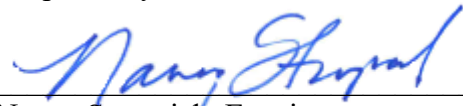
In addition, obtaining a special exception does not mitigate or excuse the imposition of a fine for Key Estero's repeat violation from March 18, 2024 to date in the instant case. The Town will present testimony from the Town's Code Enforcement Officer regarding the current status of compliance as of the date of the hearing on September 5, 2024.

⁴ Subsections (a) and (b) of Section 34-2011 of the Town's Land Development Code provide: (a) Permanent shared parking lots are considered a principal use of a parcel of land and may be approved in certain zoning districts only by special exception or through the planned development zoning district procedures. (b) Parking garages that operate in whole or part as shared parking lots are also considered a principal use of land and may be approved only through the planned development zoning district procedures (see Section 34-620(d) and 34-676(e) of this Chapter.

CONCLUSION:

In closing, the Town requests the Special Magistrate reaffirm its earlier finding that Key Estero has committed a repeat violation of Section 34-3203 and impose a fine in the amount of \$500 per day for the number of days since March 18, 2024, that the violation remains in existence. The Town requests the Special Magistrate order Key Estero to notify the Town when it has come into compliance by 1) no longer engaging in shared parking without a special exception; or 2) upon obtaining a special exception as required by the Town's Land Development as Key Estero has been advised multiple times. The Town does not believe the evidence in the record in this case justifies any further delay to the imposition of a fine. There is not, nor does it appear that there has ever been any competent and substantial evidence that Key Estero is a legal non-conforming use. Instead, the record shows that Key Estero continues to violate the Town's Land Development Code in utter disregard and respect for the Town and its residents, and believes that continuing to make losing arguments will somehow make its unlawful use of its property legal.

Respectfully submitted,



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**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

**TOWN OF FORT MYERS BEACH,
FLORIDA,**

Petitioner,

CE No. 202-40249

vs.

KEY ESTERO SHOPS, LLC,

Respondent.

REPLY BRIEF APPENDIX

Exhibit A – Town of Fort Myers Beach Charter

Exhibit B – Lee County Charter

Exhibit C – Local Planning Agency Minutes and Materials

Exhibit D – Fort Myers Beach Town Council January 21, 2020 Meeting Minutes

Exhibit E – Fort Myers Beach Town Council January 21, 2020 Agenda Materials

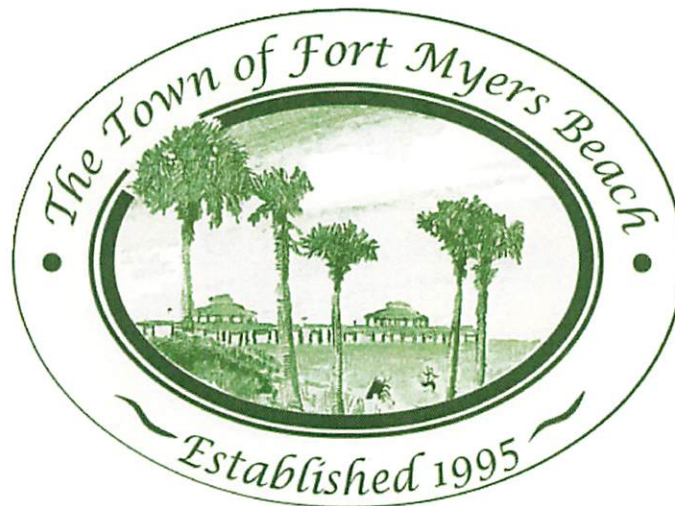
Exhibit F – Special Magistrate January 30, 2020 Transcript

Exhibit G – Special Magistrate Materials

Exhibit H – Court Order Granting Motion to Dismiss Appeal with Prejudice

The Town of Fort Myers Beach

Incorporated December 1995



CHARTER

Adopted April 2016

Page 1 of 13

I certify that this document is
a true copy of the original

Signed: Amy Bala

Date: 8/22/23

LEE COUNTY HOME RULE CHARTER

ARTICLE I

Creation, Powers and Ordinances of Home Rule Charter Government

Section 1.1: Creation and General Powers of Home Rule Charter Government

Lee County shall be a Home Rule Charter county, and, except as may be limited by this Home Rule Charter, shall have all county and municipal powers of self-government granted now or in the future by the Constitution and laws of the State of Florida.

Section 1.2: Body Corporate, Name and Boundaries

Lee County shall be a body corporate and politic. The corporate name shall be Lee County. The county seat and boundaries shall be those presently designated by law.

Section 1.3: Relation to State Law

The provisions of this Home Rule Charter are not intended, and shall not be construed, to conflict with the Constitution of the State of Florida, a general law, or special law approved by vote of the electorate.

Section 1.4: Relation to Municipal Ordinances

Municipal ordinances shall prevail over County ordinances to the extent of any conflict.

ARTICLE II

Organization of County Government

Section 2.1: Elected Commission and Appointed County Manager Form of Government

Lee County shall operate under an appointed County Manager form of government with cooperation of legislative and executive functions in accordance with the provisions of this Home Rule Charter. The legislative responsibilities and powers of the County shall be assigned to, and vested in, the Board of County Commissioners. The executive responsibilities and power of the County shall be assigned to and vested in the County Manager, who shall carry out the directives and policies of the Board of County Commissioners and enforce all orders, resolutions, ordinances, and regulations of the Board of County Commissioners, the County Charter, and all applicable general law, to ensure that they are faithfully executed.

Section 2.2: Legislative Branch

A. The County Commission Composition, Election and Terms of Members

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(1) Composition and Election

The governing body of the County shall be a Board of County Commissioners composed of five (5) members serving staggered terms of four (4) years. There shall be one Commissioner for each of the five (5) County Commission districts established pursuant to general law and they shall be elected in a partisan election on a county-wide basis by the electors of the County. Each County Commissioner during the term of office shall reside in the district from which such County Commissioner ran for office, provided that any County Commissioner who is removed from a district by redistricting may continue to serve during the balance of the term of office.

(2) Terms of County Commissioners

No Commissioner shall serve more than three (3) consecutive terms on the Board. No previous term in office which is in progress as of November 2014 shall be considered a term of service for purposes of the limitations contained herein.

B. Redistricting

County Commission district boundaries shall be changed only after notice and a public hearing as provided by general law.

C. Salaries and Other Compensation

Salaries and other compensation of the County Commissioners shall be set the same as those set by general law for the County Commissioners of non-charter counties and shall not be lowered during the term of office.

D. Authority

The Board of County Commissioners shall exercise all legislative authority provided by this Home Rule Charter in addition to any other powers and duties authorized by general law or special law.

E. Administrative Code

The Board of County Commissioners shall adopt an Administrative Code by ordinance and in accordance with general law within twelve (12) months of the effective date of this Charter.

(1) The Administrative Code shall organize the administration of County government and set forth the duties and responsibilities and powers of all County officials and agencies.

(2) The Administrative Code shall not apply to the elected Constitutional Officers.

F. Vacancies

A vacancy in the office of County Commissioner shall be defined and filled as provided by general law.

G. Recall

The members of the Board of County Commissioners shall be subject to recall as provided by general law.

H. Initiative

proposed amendment to the Supervisor of Elections, with the form on which the signatures will be affixed, and shall obtain the approval of the Supervisor of Elections of such form. The style and requirements of such form shall be specified by County ordinance. The beginning date of any petition drive shall commence upon the date of approval by the Supervisor of Elections of the form on which signatures will be affixed, and said drive shall terminate one hundred and eighty (180) days after that date. In the event sufficient signatures are not acquired during that one hundred and eighty (180) day period, the petition initiative shall be rendered null and void and none of the signatures may be carried over onto another identical or similar petition. The sponsor shall submit signed and dated forms to the Supervisor of Elections and upon submission pay all fees as required by general law. The Supervisor of Elections shall within forty-five (45) days verify the signatures thereon.

(4) If approved by a majority of those electors voting on the amendment at the general election; the amendment shall become effective on the date specified in the amendment, or, if not so specified, on January 1 of the succeeding year.

B. Amendments and Revisions by Charter Review Commission

(1) A Charter Review Commission consisting of fifteen (15) electors of the County shall be appointed by the Board of County Commissioners at least eighteen (18) months prior to the general election held every eight (8) years after the general election occurring in 2008. The Charter Review Commission shall review the Home Rule Charter and propose any amendments or revisions which may be advisable for placement on the general election ballot. No member of the State Legislature, the Board of County Commissioners, any County Constitutional Officer, any elected officer of a municipality nor any Contract employees of the Board of County Commissioners nor persons employed as aides to individual County Commissioners shall be a member of the Charter Review Commission. Vacancies shall be filled within thirty (30) days in the same manner as the original appointments.

(2) The Charter Review Commission shall meet for the purpose of organization within thirty (30) days after the appointments have been made. The Charter Review Commission shall elect a chairman and vice chairman from among its membership. Further meetings of the Charter Review Commission shall be held upon the call of the chairman or a majority of the members of the Charter Review Commission. All meetings shall be open to the public. A majority of the members of the Charter Review Commission shall constitute a quorum. The Charter Review Commission may adopt such other rules for its operations and proceedings as it deems desirable. Members of the Charter Review Commission shall receive no compensation but shall be reimbursed for necessary expenses pursuant to general law.

(3) A budget for the Charter Review Commission shall be set by the Board of County Commissioners. Within the budget limits set by the County Commission, the Charter Review Commission may employ a staff, consult with and retain experts, and purchase, lease, or otherwise provide for such supplies, materials, equipment and facilities as it deems necessary and desirable.

(4) The Charter Review Commission shall hold at least three (3) public hearings at intervals of not less than ten (10) days nor more than twenty (20) days on any proposed Charter amendment or revision. Any proposed Charter amendment or revision that receives an affirmative vote of three-fifths (3/5) approval of the entire membership of the Charter Review Commission shall be submitted to the County Commission for its consideration. Any proposed Charter amendment or revision that receives four-fifths (4/5) approval of the entire membership of the Charter Review Commission shall be placed directly on to the next

general election ballot by the County Commission. If a majority of the electors voting on the proposed amendments or revisions to the Charter placed on the ballot favor adoption, such amendments or revisions shall become effective on January 1 of the succeeding year or such other time as the amendment or revision shall provide.

(5) No later than one hundred and twenty (120) days prior to the general election, the Charter Review Commission shall deliver to the Board of County Commissioners, those revisions or amendments to the Charter approved by the Charter Review Commission by three-fifths (3/5) vote, if any. The Board of County Commissioners shall promptly review the proposals as approved by the Charter Review Commission. If approved by a majority of the membership of the Commission, the County Commission shall place the proposals on the next general election ballot. If a majority of the electors voting on the amendments or revisions to the Charter favor adoption, such amendments or revisions shall become effective on January 1 of the succeeding year or such other time as the amendment or revision shall provide.

(6) If the Charter Review Commission does not submit any proposed Charter amendments or revisions to the Board of County Commissioners at least one hundred and twenty (120) days prior to the general election or place any amendments or revisions directly onto the ballot, the Charter Review Commission shall be automatically dissolved. Otherwise, upon acceptance or rejection of the proposed amendments or revisions by the County Commission, the Charter Review Commission shall be automatically dissolved. Upon dissolution of the Charter Review Commission, all property of the Charter Review Commission shall thereupon become the property of the County.

C. Amendments Proposed by the Board of County Commissioners

(1) Amendments to this Home Rule Charter may be proposed by ordinance enacted by the Board of County Commissioners by an affirmative vote of a simple majority of the membership of the Board of County Commissioners. Each proposed amendment shall embrace but one subject and matter directly connected therewith. Each proposed amendment shall become effective upon approval by a majority of the electors of Lee County voting in a referendum at a general election. The Board of County Commissioners shall give public-notice of such referendum election as required by general law.

(2) If approved by a majority of those electors voting on amendment at the general election, the amendment shall become effective on the date specified in the amendment, or, if not so specified, on January 1 of the succeeding year.

Section 4.2: Home Rule Charter Transition

A. General Provisions

Unless expressly provided otherwise in this Home Rule Charter, the adoption of this Charter shall not affect any existing contracts or obligations of Lee County; the validity of any of its laws, ordinances, regulations, and resolutions; or the term of office of any elected County officer, whose term shall continue as if this Charter had not been adopted.

B. Initial County Commissioners

(1) The electors of Lee County shall have the right to initiate County ordinances in order to establish new ordinances and to amend or repeal existing ordinances upon petition of qualified electors in the County. Each such proposed ordinance shall embrace but one subject and matter directly connected therewith. The number of qualified elector signatures for a valid petition must equal at least five percent (5%) of the electors qualified to vote in the last preceding general election. No more than thirty percent (30%) of the total number of signature required will be allowed in any single Board of County Commission District.

(2) The sponsor of an initiative ordinance shall, prior to obtaining any signatures, submit the text of the proposed ordinance to the Supervisor of Elections, with the form on which, signatures will be affixed, and shall obtain the approval of the Supervisor of Elections of such form. The style and requirements of such form shall be specified by County ordinance. The beginning date of any petition drive shall commence upon the date of approval by the Supervisor of Elections of the form on which signatures will be affixed, and said drive shall terminate one hundred and eighty (180) days after that date. In the event sufficient signatures are not acquired during that one hundred eighty (180) day period, the petition initiative shall be rendered null and void and none of the signatures may be carried over into another identical or similar petition. The sponsor shall submit signed and dated forms to the Supervisor of Elections and upon submission shall pay all fees as required by general law. The Supervisor of Elections shall within forty-five (45) days verify the signatures thereon.

(3) Within forty-five (45) days after the requisite number of names have been verified by the Supervisor of Elections and reported to the Board of County Commissioners, the Board of County Commissioners shall notice and hold according to general law a public hearing on the proposed ordinance and vote on it. If the Board of County Commissioners fails to enact the proposed ordinance at the public hearing, it shall, at the public hearing, by resolution, call for a referendum on the question of the adoption of the proposed ordinance to be held at the next general election occurring at least ninety (90) days after the adoption of such resolution. If the question of the adoption of the proposed ordinance is approved by a majority of those registered electors voting on the question, the proposed ordinance shall be declared by resolution of the Board of County Commissioners to be enacted and shall become effective on the date specified in the ordinance, or, if not so specified, on January 1 of the succeeding year. The Board of County Commissioners shall not amend or repeal an ordinance adopted by this initiative procedure for a period of one year after the effective date of such ordinance and thereafter may amend or repeal such ordinance only by an affirmative vote of at least a majority plus one of its membership.

(4) The power to enact, amend or repeal an ordinance by initiative shall not include ordinances relating to the County budget, debt obligations, capital improvement programs, salaries of County officers and employees, the levy and collection of taxes, and the rezoning of an individual parcel of land.

I. Non-Interference

(1) County Commissioners may communicate, directly or indirectly, with employees, officers or agents under the direct or indirect supervision of the County Manager or County Attorney only for the purpose of inquiry or information.

(2) Except for the purpose of inquiry or information, a County Commissioner shall not, directly or indirectly, give directions to or interfere with the performance of the duties of any employee, officer, or agent under the direct or indirect supervision of the County Manager or County Attorney.

(3) Violations of the Section of the Charter shall constitute malfeasance within the meaning of Section 100.361(l)(b), Florida Statutes.

(4) Nothing contained herein shall prevent a County Commissioner from referring a citizen complaint or request to the County Manager or County Attorney.

Section 2.3: Executive Branch

A. The County Manager

(1) The County Manager shall be appointed by an affirmative vote of a simple majority of the membership of the Board of County Commissioners. The County Manager may be terminated with or without cause by an affirmative vote of a simple majority of the membership of the Board of County Commissioners. The County Manager may be employed by means of a contract with the Board of County Commissioners. The County Manager shall be the chief executive officer of the County and all executive responsibilities and power shall be assigned to and vested in the County Manager, which shall consist of the following powers and duties, with the specific exception of the Office of the Lee County Hearing Examiner, which notwithstanding any provision of this Charter to the contrary, may continue by existing Ordinance, or be re-established by new Ordinance, consistent with the other provisions of this Charter:

(a) Report annually to the Board of County Commissioners and to the citizens on the state of the County, the work of the previous year, recommendations for action or programs for improvement of the County, and the well-being of its residents.

(b) Prepare and submit the annual budget and capital programs to the Board of County Commissioners and execute the budget and capital programs in accordance with appropriations and ordinances enacted by the Commission.

(c) Ensure that all ordinances resolutions and orders of the Board of County Commissioners and all laws of the State which are subject to enforcement by the County Manager, or by officers who are subject under this Charter to the County Manager's direction and supervision, are faithfully executed.

(d) Carry into execution such other powers or duties, as are required by this Charter or may be prescribed by the Board of County Commissioners.

(e) The County Manager shall exercise all executive authority provided by this Home Rule Charter in addition to all other powers and duties authorized by general or special law.

(2) The County Manager shall be qualified by administrative and executive experience and ability to serve as the chief executive officer of the County. Minimum qualifications including educational and administrative requirements for the County Manager shall be established by County ordinance. The County Manager need not be a resident of the County at the time of appointment, but during the term of appointment shall reside within the County.

(3) The compensation of the County Manager shall be fixed by the Board of County Commissioners.

(4) The office of County Manager shall be deemed vacant if the incumbent moves his residence from the

County or is, by death, illness, or other casualty, unable to continue in office. A vacancy in the office shall be filled in the same manner as the original appointment. The Board of County Commissioners may appoint an acting County Manager in the case of vacancy, temporary absence or disability until a successor has been appointed and qualified or the County Manager returns.

B. County Department Heads

- (1) The County department heads shall be appointed by and shall be responsible to the County Manager.
- (2) The County Manager shall have the sole authority to suspend or terminate any department head with or without cause.

C. County Attorney

- (1) The County Attorney shall be appointed by an affirmative vote of a simple majority of the membership of the Board of County Commissioners. The County Attorney may be terminated with or without cause by an affirmative vote of a simple majority of the membership of the Board of County Commissioners.
- (2) The County Attorney may be employed by means of a contract with the Board of County Commissioners.
- (3) The County Attorney shall be a member in good standing of the Florida Bar and shall reside within the County during the term of appointment.
- (4) The County Attorney shall be the legal advisor and provide legal services to the Board of County Commissioners, the County Manager and departments and divisions under the supervision of the County Manager, and all County regulatory and advisory boards and agencies in all matters relating to their official duties and responsibilities.
- (5) The County Attorney shall appoint and terminate Assistant County Attorneys with or without cause.
- (6) In the event there is an actual or potential conflict of interest between parties represented by the County Attorney as specified in Section 2.3.C.(4), the County Attorney shall promptly submit such conflict to the Board of County Commissioners who shall resolve such conflict by hiring special legal counsel or other lawfully available method to resolve the conflict.

ARTICLE III

Elected County Constitutional Offices

Section 3.1: Elected County Constitutional Offices

The offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court and Supervisor of Elections shall remain as independent, elected constitutional officers and the powers, duties and functions shall not be altered by this Home Rule Charter, except as provided in Section 3.2: Non-Partisan

Elections (below). The Constitutional officers shall perform their executive and administrative functions as specified by general law.

Section 3.2: Non-Partisan Elections

The Supervisor of Elections shall be non-partisan.

A. Non-Partisan Election Procedures

If three (3) or more candidates, none of whom is a write-in candidate, qualify for such office, the names of those candidates shall be placed on a non-partisan ballot at the first primary election. If no candidate for such office receives a majority of the votes cast for such office in the first primary election, the names of the two (2) candidates receiving the highest number of votes for such office shall be placed on the general election ballot.

B. Qualification by Petition

A candidate for non-partisan office may qualify for election to such office by means of the petitioning process as provided by general law.

C. Legislative Intent

It is the intent of the people of Lee County that the provisions of this section with respect to the election of the Supervisor of Elections on a non-partisan basis is an exercise of their constitutional prerogative to choose this county officer in another manner as provided in Article VIII, section 1(d) of the Constitution of Florida. This section will not otherwise be construed to alter, transfer, diminish or abolish any of the powers, duties or responsibilities of said office now or hereafter existing under the Constitution and general laws of Florida.

ARTICLE IV

Home Rule Charter Amendments, Charter Review, Transition, Severance, Effective Date

Section 4.1: Home Rule Charter Amendments

A. Amendments Proposed by Petition

(1) The electors of Lee County shall have the right to initiate proposed amendments to this Home Rule Charter upon petition of the qualified electors in the County. The number of qualified elector signatures for a valid petition must equal at least seven percent (7%) of the electors qualified to vote in the last preceding general election.

(2) Each such proposed amendment shall embrace but one subject and matter directly connected therewith. Each Charter amendment proposed by petition shall be placed on the ballot by resolution of the Board of County Commissioners for the next general election occurring in excess of ninety (90) days from the certification by the Supervisor of Elections that the requisite number of signatures has been verified.

(3) The sponsor of a petition amendment shall, prior to obtaining any signatures, submit the text of the

The persons comprising the Lee County Board of County Commissioners on the effective date of this Charter shall become the initial members of the Board of County Commissioners of the Charter Government and shall perform the functions thereof until the normal expiration of their terms or until the election and qualification of their successors as provided by law.

C. Outstanding Bonds

All outstanding bonds, revenue certificates, and other financial obligations of the County outstanding on the effective date of this Charter shall be obligations of the Charter Government. All actions taken by the former government relating to the issuance of such obligations are hereby ratified and confirmed. Payment of such obligations and the interest thereon shall be made solely from and charged solely against funds derived from the same sources from which such payment would have been made had this Charter not taken effect.

D. Employee Continuation

All employees of the former county government shall on the effective date on this Charter become employees of the County government created by this Charter. All existing wages, benefits, collective bargaining certifications and agreements, and conditions of employment shall continue uninterrupted, until modified by lawful action of the Board of County Commissioners or joint agreement of the Board and any appropriate bargaining agent, if a collective bargaining agreement exists and controls.

Section 4.3: Severability

If any provision of this Charter or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of the Charter which shall be given effect without the invalid provision or application, and to this end the provisions of this Charter are declared severable.



Local Planning Agency

2525 Estero Boulevard
Fort Myers Beach, FL33931

Regular Meeting

~ Minutes ~

Tuesday, December 10, 2019	9:00 AM	Council Chambers
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FINAL

I. Call to Order

The meeting was called to order at 9:00 AM

1. Roll Call

Members present: Chair Megan Heil, Dan Allers, James Atterholt, Dan Hughes, Jane Plummer, Scott Safford and Timothy Smith.

II. Invocation

LPA Member Atterholt.

III. Pledge of Allegiance

IV. Approval of Minutes

A. Local Planning Agency - Regular Meeting - Nov 12, 2019 9:00 AM

MOTION: LPA Member Plummer moved to approve the minutes; second by Chair Heil.

VOTE: Motion approved; 7-0.

B. Local Planning Agency - Regular Meeting - Nov 19, 2019 9:00 AM

MOTION: LPA Member Plummer moved to approve the minutes; second by Chair Heil.

VOTE: Motion approved; 7-0.

V. Public Hearings

1. Review of Non-conforming Use Determination for 1661 Estero Blvd

Find the request consistent / not consistent with the Land Development Code as a commercial parking lot / permanent shared parking.

Town Attorney Herin, Jr. swore in those providing testimony. Ex parte communication: LPA Member Smith - drive by; LPA Member Safford - business across the street; LPA Member Atterholt - site visit; LPA Member Allers - drive

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by; LPA Member Plummer - site visit and Chair Heil - site visit.

Community Development Services Director Jason Green reviewed the history of the issue.

Steve Hartsell from Pavese Law Firm represented the owner. He utilized a PowerPoint presentation and included a copy in the packet of information. Slides included: Location of Property; Downtown Zoning District; Other Use of Parking Lots; The Problem; Tax Card; 1974 and 1977 Lee County Zoning Aerial Photographs; Excerpt from First Lee County Zoning Regulations and an Affidavit from Yvonne Lucas. Owner Carmen Naccarato stated that he purchased the building in 2001 and he was aware that parking places were rented with an attendant on site. He noted that 4 units (out of 20) were currently being leased and extra parking was available. He commented that he received a permit in 2017 to block a second access.

Attorney Hartsell displayed the 2017 site plan with 135 parking spaces; LDC Section 34-3202(c) definition of non-conforming use and LDC Section 34-3203 and Conclusion. He requested that the LPA find the parking lot a lawful non-conforming use and be allowed to continue.

Attorney Hartsell stated that even if the units were all leased, a parking lot attendant would still have to be on the premises. He remarked that the applicant should not have to obtain permission to continue doing what was lawful in the past.

LPA Member Atterholt questioned why the applicant did not install a landscape buffer. Mr. Naccarato stated that he spent over \$35,000.00 for 64 palms. Attorney Hartsell did not know how much more landscaping the Town required. He indicated his client was aware of the lawful non-conforming use when he purchased the property in 2017. LPA Member Allers estimated that leasing 28 parking places brought in \$4,000.00 per month on average. Attorney Hartsell explained that the non-conforming use was not driven by the need for revenue.

LPA Member Plummer leased property at the building for six years and stated that without an attendant, the tenants would not have had parking spaces available. She felt there was a use for the parking.

LPA Member Hughes verified that they had to decide whether the non-conforming use was permitted as a commercial parking lot or a retail establishment with parking. Attorney Hartsell argued that Lee County allowed daily paid parking to take place at the location in 1976 without a permit and it had continued to this day.

LPA Member Smith confirmed that 135 parking slots on the illustration were approximate. He questioned how many days the parking lot was used as a paid parking lot. Attorney Hartsell replied that parking was available year-round.

LPA Member Safford discussed changing the use by parking year-round versus renting out parking on weekends and special events. Attorney Hartsell reiterated that they had to hire an attendant on a year-round basis; otherwise, there would not be parking available for the tenants.

LPA Member Hughes read Section 34-3242(a) regarding increasing the non-conforming use and expanding the scope of activity. Attorney Hartsell replied that the number of parking spaces was flexible and continued to be flexible. He noted that the applicant had more parking spaces available than tenants. Mr.

Naccarato indicated that approximately nine units were rented when he purchased the property.

Director Green discussed the list of uses on Packet Page 25 and a development order sheet previously supplied by the applicant. He stated that the applicant did not establish how many spaces were surplus and how many spaces were allocated for the retail units.

Attorney Hartsell explained that the applicant did not apply for a variance because he felt it was a lawful non-conforming use.

LPA Hughes stated that the issue boiled down to the definition of lawful non-conforming use and expanding the use.

LPA Member Plummer indicated the use was not expanded because the parking spaces were already there. Town Attorney Herin, Jr. stated that the commercial component expanded and staff did not address the issue because they considered it a non-conforming use.

No public comment.

Chair Heil commented that the use expanded and she did not find it was a non-conforming use. LPA Member Plummer questioned the status of the paid parking lot across from the Lani Kai. Director Green was not aware of the permits affiliated with the site, but he would research it.

LPA Member Hughes questioned which variances would be required if the request was denied. Director Green replied that there could be several. Town Attorney Herin, Jr. noted that ADA requirements regarding the layout of parking spaces would have to be implemented.

MOTION: Chair Heil moved that from findings and testimony, commercial parking was not consistent with a lawfully non-conforming use of the property at 1661 Estero Blvd.; second by LPA Member Atterholt.

VOTE: Motion approved; 6-1 with LPA Member Plummer dissenting.

LPA Member Hughes felt that even if they had legal non-conforming use, they lost their use under Section 34-3242(a).

2. DCI20190073 Rezoning of 2639-41 Estero Boulevard

**Recommend approval / denial of 2639-41 Estero Boulevard
Rezoning from RC to IN, and find that it meets/does not meet, the
requirements for rezoning as outlined in the staff report.**

Director Green reviewed the request. He noted that staff recommended approval to Town Council.

LPA Member Plummer noted that she used to live at the property. She questioned whether there would be ingress to access Bay Oaks from Estero Blvd. Director Green responded that it was in the master planning stage.

No public comment.

MOTION: LPA Member Hughes moved to approve rezoning the property in question from Residential Conservation to Institutional based on the findings, conclusions and consistency with the comprehensive plan; second by LPA Member Plummer.

VOTE: Motion approved; 7-0.

3. Text Amendment to LDC Sections 34-638, 34-631, Table 34-3, Figure 34-1-a

Recommend approval of the proposed edits the Land Development Code, Sections 34-631, 34-638, Table 34-3, and Figure 34-1-a.

Community Development Planner Sarah Propst reviewed changes. Discussion was held regarding the “sticks and carrots” option, the daylight plane angle, requiring taller trees rather than shrubs, limiting the deviation in spacing, size of house on a 50-foot wide lot with 7.5’ setbacks on each side, lot size dictates the setback, setbacks in different zoning districts, and measuring the angle from the base flood elevation. LPA Member Allers mentioned restricting the location of an elevator with the angle approach.

LPA Member Atterholt questioned whether they could legally apply the vegetation carrot to waterfront properties on the Bayfront and beachside. Discussion ensued. LPA Member Smith commented on the difficulty of enforcing the view corridor without anything in writing and verifying the angle of a roof. He stated that they needed to make the standards easy to verify. Chair Heil noted that creating light between buildings was the goal. Planner Propst indicated that alternatives from the sticks and carrots option could be applied to the light angle method.

Discussion was held regarding non-conforming and conforming properties in different zoning districts. LPA Member Atterholt supported the sticks and carrots method with a vegetation policy and an additional carrot for that policy. LPA Member Allers agreed. LPA Members Hughes and Safford supported the daylight plane option. LPA Member Plummer supported a combination of the two options. Chair Heil preferred the sticks and carrots option.

LPA Member Hughes supported waterfront side setbacks for primary structures of ten feet. LPA Members Safford and Atterholt agreed along with Chair Heil. (LPA Member Hughes left the meeting.)

Director Green stated that they would prepare a sticks and carrots approach, stay with the setback change and define porch more clearly. Discussion was held regarding encroachments up to 10 feet of front setbacks with a porch or stoop. LPA Members Allers, Atterholt, Plummer, Safford and Smith supported Option 1) for porches.

MOTION: LPA Member Plummer moved to send it back for edits based on the conversation on the Amendment to the Land Development Code, Table 34-3; LDC Section 34-638 Minimum Setbacks; LDC Sect 34-631 Building Height; Figure 34-1-a to be revised and sent back and other sections that may need to be revised based on the discussion; second by LPA Member Atterholt.

VOTE: Motion approved; 6-0 with LPA Member Hughes excused.

4. Text Amendment LDC Sect 34-3274 Minimum Use Determination Regulations

Recommend approval to Town Council of a text amendment to LDC Section 34-3274, Minimum Use Determination.

Planner Propst reviewed the background and the proposed language modification. Director Green noted that some co-mingled lots did not meet the outlined criteria.



Local Planning Agency

Regular Meeting

~ Agenda ~

2525 Estero Boulevard
Fort Myers Beach, FL33931

Tuesday, December 10, 2019	9:00 AM	Council Chambers
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I. Call to Order

II. Invocation

III. Pledge of Allegiance

IV. Approval of Minutes

A. Local Planning Agency - Regular Meeting - Nov 12, 2019 9:00 AM

B. Local Planning Agency - Regular Meeting - Nov 19, 2019 9:00 AM

V. Public Hearings

1. Review of Non-conforming Use Determination for 1661 Estero Blvd

Find the request consistent / not consistent with the Land Development Code as a commercial parking lot / permanent shared parking.

2. DCI20190073 Rezoning of 2639-41 Estero Boulevard

Recommend approval / denial of 2639-41 Estero Boulevard Rezoning from RC to IN, and find that it meets/does not meet, the requirements for rezoning as outlined in the staff report.

3. Text Amendment to LDC Sections 34-638, 34-631, Table 34-3, Figure 34-1-a

Recommend approval of the proposed edits the Land Development Code, Sections 34-631, 34-638, Table 34-3, and Figure 34-1-a.

4. Text Amendment LDC Sect 34-3274 Minimum Use Determination Regulations

Recommend approval to Town Council of a text amendment to LDC Section 34-3274, Minimum Use Determination.

VI. Administrative Agenda

1. Code of Ordinances Ch 22 Special Events Discussion

Discussion of any changes the LPA would like to see in Chapter 22 of the LDC.

I certify that this document is
a true copy of the original

Signed: Abala

Date: 8/21/24

2. Tidix3

2. Places of Worship and Religious Facilities LDC Discussion

Discussion and direction to staff on how to proceed or additional information needed

~~Recess as Local Planning Agency~~
Open as Historic Preservation Board
~~Adjourn as Historic Preservation Board~~
Reconvene as Local Planning Agency

- VII. LPA Members Items/Reports
- VIII. LPA Attorney Items/Reports
- IX. Community Development Items/Reports
- X. Items for next months agenda
- XI. Public Comment
- XII. Adjournment

Town of Fort Myers Beach

Agenda Item Summary Blue Sheet Number: 2019-34

1. Requested Motion:**Meeting Date: Dec 10, 2019**

Find the request consistent / not consistent with the Land Development Code as a commercial parking lot / permanent shared parking.

Why the action is necessary:

The property owner has presented information related to the historical use of the property purportedly as a commercial parking lot. Staff has reviewed the submitted information and does not find the information complete and does not find the suggested use (permanent shared parking / commercial paid parking lot) should be recognized as a non-conforming or conforming use.

What the action accomplishes:

Staff has agreed to allow the property owner to proceed with review by the LPA and Town Council for input and final determination.

2. Agenda:**3. Requirement/Purpose:**

Public Hearings

4. Background:

Key Estero Shops, located at 1661 Estero Boulevard, is under Code Enforcement action related to the selling or renting of parking spaces intended for the commercial square footage on-site. The property owner believes the use was approved previously through Lee County and that they have a right to continue the use. The property does not qualify for a Use Permit due to the LDC requirement that all of the development standards for a permanent shared parking lot shall be met. The property owner has not provided documentation showing that the parking lot meets those requirements. Landscape buffers are an example of items that can't meet the current Town LDC. A variance option was suggested in the interim of the LDC potentially being updated and in case the update doesn't resolve all of their non-conforming site development issues. The property owner has not pursued that option.

Review of the provided material indicates the previous Lee County zoning district did permit the suggested use, commercial paid parking lot; however, the site plan and other approvals did not include that use. Furthermore, the parking spaces were not delineated for commercial parking versus the commercial/retail use within the building.

The property owner has provided a series of Exhibits. Exhibit 6.3 does not offer any evidence of use and parking calculations. Previous discussions with the property owner's attorney included materials that had more details, but clearly indicated the parking calculations based on the amount of commercial/retail building square footage. That plan has not been included.

The Town Council may find that the request is not consistent or may determine the issuance of a Use Permit is consistent with the Land Development Codes.

Attachments:

1661 Estero Blvd Determination Docs (PDF)

5. Alternative Action:

45 minutes

6. Staff Recommendations:**7. Recommended Approval:**

Jason Green
Jason Green, Community Development Services

12/3/2019

John R Herin Jr Esq.
John R Herin Jr Esq., Town Attorney

12/3/2019

Amy Baker
Amy Baker, Contracts Manager

12/3/2019

PAVESE LAW FIRM

Town of Fort Myers Beach

NOV 18 2019

STEVEN C. HARTSELL
Florida Bar Board Certified Attorney in
Condominium and Planned Development Law
Direct dial: (239) 336-6244
Email: SteveHartsell@paveselaw.com

Received by:

1833 Hendry Street, Fort Myers, Florida 33901 | P.O. Box 1507, Fort Myers, Florida 33902 | (239) 334-2195 | Fax (239) 332-2243

November 15, 2019

Mr. Jason Green
Community Development Services
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Via email: green@fmbgov.com

**RE: Request for Nonconforming Use Determination for
Key Estero Shops, 1661 Estero Blvd. and
Request to Continue CE19-0026 (Our File #93234.001)**

Dear Jason:

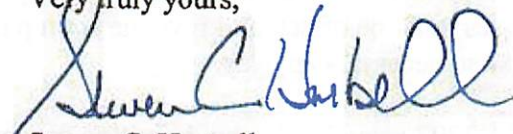
Thank you for taking the time to meet with me on November 7th and to review the evidence and documents that I have compiled with regard to demonstrating that a commercial parking lot with paid parking per space is a lawful nonconforming use at the Key Estero Shops property. As we discussed, this seems to be a decision that is outside the scope of what the staff is able to determine without direction from the Town Council. The Town Manager's suggestion that this should start at the LPA level in order to provide the Town Council with a recommendation also makes sense and we appreciate that approach.

Consequently, I am requesting that you schedule this before the LPA at the next hearing. I would also request that the pending code enforcement hearing (Case # CE19-0026) scheduled for November 21, 2019, be continued for 60 days in order to give us the opportunity to get before the LPA for its recommendation and then take that recommendation to the Town Council.

Please let me know if I need to be present for that Code Enforcement continuance request hearing or whether that continuance can be done without our being present.

If you have any questions, or need any documentation in addition to what is included, please feel free to contact me. Thank you.

Very truly yours,



Steven C. Hartsell

SCH/llp
Enclosures

cc: Carmen Naccarato, Key Estero Shops, LLC
Lora Naccarato

November 15, 2019

Request for Determination of an Existing Nonconforming Use for a Commercial Parking Lot to allow daily paid parking to continue at the Key Estero Shops, 1661 Estero Blvd., Fort Myers Beach.

The Key Estero Shops property is located at 1661 Estero Blvd., Fort Myers Beach in the Downtown District. Since 1980, and before, while the property was under Lee County zoning jurisdiction, extra parking spaces have been used for daily paid parking as was permitted by Lee County. Even after the Town incorporated, the daily paid parking has continued at Key Estero Shops without problems.

According to LDC §34-671 the purpose of the Downtown District is to create the desired quality and character for the center of the pedestrian-oriented commercial activities. LDC §34-673 shows that the Downtown District is planned as a "park-once" district with preference given to pedestrian movement within the district. Parking space reductions are provided for, parking lot interconnections are encouraged, and in some places (Old San Carlos Blvd.) individual owners control all rights of using their lots and may choose to allow the wider use of their parking spaces for a fee [§34-673 (c)(3)]. The whole context of the Downtown District encourages the provision of more parking spaces to facilitate the pedestrian activity in the district. This is further underscored by LDC §34-2019 - Other use of parking lots:

(a) Parking spaces that are not in daily use and are located in parking lots having ten or more parking spaces and meeting the other requirements of this division may be rented to the general public during peak periods.

The Key Estero Shops parking lot has more than 10 spaces and also fits the requirements of §34-2019(a) even if it were not already an existing nonconforming use from the Lee County zoning. It similarly fits into the intent of the Downtown District to provide as much flexibility as possible in favor of providing parking spaces for visitors who come to Fort Myers Beach. So far, lack of parking doesn't prevent people from coming to the Beach with expectations of being able to park and shop, eat or go to the beach. But when they arrive, if they cannot find adequate parking, they will park illegally in areas where there shouldn't be parking, or they will park in parking lots where businesses need that parking for customers. Consequently, owners of buildings with parking lots near Downtown and the beachfront must pay employees to monitor the use of the parking lot. Those added expenses must be offset, and revenue from parking space rental helps offset the lot monitoring costs that are otherwise necessary anyway.

LDC Sec. 34-3202 provides for the definition of a nonconforming use:

(c) Nonconforming use. For purposes of this article, the term "nonconforming use" means a use or activity which was lawful prior to the adoption of any ordinance from which this code is derived, ..., but which fails, by reason of such adoption, to

conform to the use requirements where the property is located. See division 3 of this article for regulations on nonconforming uses. [Emphasis Supplied.]

Sec. 34-3203 - Illegal buildings, uses and lots, provides that:

If a building, use, or lot was not lawful when created ..., it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses or lots. [Emphasis Supplied.]

Daily paid parking at the Key Estero Shops parking lot has been going on for decades before the Town incorporated and continued afterwards. As shown below, Commercial Parking Lot is a use that was lawful under the prior Lee County zoning and deserves the protection provided by the code for nonconforming uses. The owner of Key Estero Shops submits that by the definition of a nonconforming use and its intent, the continued paid parking for a fee in this parking lot should be recognized as a lawful nonconforming use since it was not illegal when Key Estero Shops was built. The revenue from paid parking was part of the reason it was purchased and can continue to operate. Without that revenue the Key Estero Shops cannot continue to successfully operate.

The Key Estero Shops property was located in a Lee County Zoning District which permitted a Commercial Parking Lot where it would have been lawful to have daily paid parking spaces and that use should be recognized as a nonconforming use.

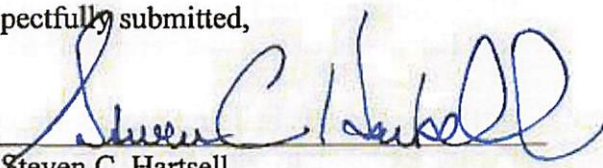
1. The Key Estero Shops building was constructed in 1976 according to the Property Appraiser's Office website. *Exhibit 1*, Lee County Property Appraiser's Card for 1661 Estero Blvd. shows it was built in 1976.
2. The Building was finished by 1977 according to the most recent Lee County Aerial after 1975. *Exhibit 2*.
3. The Lee County Zoning that was in place in 1976 when this building was first constructed was the BU-1 (Business One) District according to the 1974 Lee County Zoning Aerial which shows this Key Estero Shops site was designated as BU-1. *Exhibit 3*.
4. In 1976 when this building was constructed, the Zoning Regulations in effect were the original Zoning Regulations adopted as Resolution Z-1. An excerpt from those original zoning regulations is attached as *Exhibit 4*. Section 10 (at Ex. 4.3) shows the regulations in effect for the BU-1/Neighborhood Retail Business District. Page 25 (at Ex. 4.4) contains the Uses permitted in the BU-1 District. The middle of a very long list includes: Parking Lots (Commercial). Those are lots that allow for paid parking.
5. The lawful Commercial Parking Lot use of the property at this location is also demonstrated by its long term activity on this site. A sworn affidavit from Yvonne Lucas, an officer in the corporation that owned the property from 1980 through 2001 shows that it was a standard practice to rent the surplus parking spaces daily, weekends, holidays and special events. *Exhibit 5*. She had personal

knowledge of those continuous activities prior to the purchase of the property and for the 21 years during which her corporation owned it and managed the parking lot.

6. Carmen Naccarato is the Manager of the Key Estero Shops, LLC, a Michigan Limited Liability Company, the present owner of the Key Estero Shops property.
7. Carmen Naccarato is familiar with the property from having been a longtime visitor since at least 2001 when he became aware of this site and became interested in purchasing it. During that entire time he was aware that it had parking spaces being rented out on a daily basis while also providing parking lot security and monitoring through an employee who rented the extra parking spaces to daily visitors. He purchased the property in reliance upon that revenue continuing because that revenue stream is critical to his ability to successfully operate the Key Estero Shops.
8. Presently, only 5 of 20 units at Key Estero Shops are being leased out, so there is an abundance of extra parking spaces available to rent on a daily basis. Mr. Naccarato is required to have a parking lot attendant to monitor to keep the lot from being filled up with beachgoers who are not using the spaces as customers of the tenants. The attendant makes sure that there are sufficient spaces available for tenants and tenant customers while also allowing paid parking to use the extra spaces that are available.
9. To the extent that it is necessary, **Exhibit 6** is a proposed application for a USE PERMIT to allow paid parking on a daily basis, along with a site plan prepared in 2017 which shows the Key Estero Shops building and first floor units, along with the parking spaces that are available and comprise a total of 135 spaces.

In conclusion, on behalf Key Estero Shops and Mr. Naccarato, we submit that that the evidence shows that daily paid parking was permissible under the Lee County Zoning Regulations in 1976 when Key Estero Shops was first built, and that it has been used for daily paid parking regularly and continuously since that time, and that this use is a lawful nonconforming use which is consistent with the intent and purposes of the Downtown District and deserves the protections of nonconforming uses under the Land Development Code.

Respectfully submitted,

By: 

Steven C. Hartsell
Pavese Law Firm
Fla. Bar.# 0305030

SCH/lp

Attachments: *Exhibits as referenced above*

Attachment: 1661 Estero Blvd Determination Docs (2019-34 : Review of Non-conforming Use Determination for 1661 Estero Blvd)

1997 HISTORICAL

CARD 1 of 1

Folio 10227974

Cell ID 126014624

PARCEL NO: 19-46-24-W4-00402.0010

OWNER'S NAME
BEATE ROTERMUND INC

OWNER'S ADDRESS
1661 ESTERO BLVD STE 9
FT MYERS BEACH, FL 33931

LEGAL DESCRIPTION
HILLS T P SUBD PB 3 PG 84
PT LT 11 DESC OR 1468
PG 1697 LESS N 275 FT

DOR CODE ?? (Not Found)
NBHD CODE 07-105.0
(1.00) CRESCENT ST TO LOVERS LANE

ELEMENT	CODE	TYPE / DESCRIPTION
EXTERIOR WALL	17	CB STUCCO
EXTERIOR WALL	0	NONE
ROOF STRUCT	4	WOOD TRUSS
ROOF COVER	10	WOOD SHINGLE
INTERIOR WALL	4	PLYWOOD PANEL
INTERIOR WALL	5	DRYWALL
INT FLOOR	14	CARPET
INT FLOOR	0	NONE
HEATING FUEL	4	ELECTRIC
HEATING TYPE	4	FORCED AIR-DUCT...
AIR COND TYPE	3	CENTRAL
QUALITY	3	AVERAGE
BEDROOMS	N/A	PCT COMMON WALL N/A
BATHROOMS	78	NONSTD WALL HT 12
STORIES	2	AVG RMS/FLR 40
COMM HVAC	1	HEAT/AIR PACKAGE
STRUCT. FRAME	3	MASONARY
CEILING/WALL	5	CEILING & WALL FIN

AREA	YEAR	GROSS	PCT	ADJ	CAP	MARKET
BAS	1976	33,440	100	33,440		809,837
FST	1976	564	50	282		6,829
FOP	1976	7,558	30	2,267		54,901
UOP	1976	198	20	40		969
TOTALS:						41,760 36,029 872,536

SITE ADDRESS	1661 ESTERO BLVD 33931
ASSESSOR	ES
INSPECTOR	46
INSPECTION DATE	Wednesday, May 21, 1997
IMP TYPE	39 SHOPPING CENTER - COMMUNITY
MODEL	4 COMMERCIAL

Plan not available

LINE CODE	NAME	DESCRIPTION	LENGTH	WIDTH	UNITS	UNIT PRICE	PCT COMD	US	YEAR	ANN DEPR	DEPR ADJ	CAP FLAG	UNIT VALUE
E 1	0000 BLK TOP	BLACK TOP, IMPROVED	0.00	0.00	56,770.00	1.50	1.00	L	1976	2.00	0.60		51,093
X 2	0000 ELEV P	ELEVATOR, PASSENGER	0.00	0.00	2.00	6,500.00	1.00	B	1978	2.00	0.80		7,800

TOTAL OF EXTRA FEATURE VALUES: 58,893

LINE CODE	DESCRIPTION	ZONING	FRONT	DEPTH	DF	CF	TYPE	UNIT PRICE	UNITS	UT	TOT ADJ	ADJ UNIT PRICE	LAND VALUE	CAP	EVAL NOTES
L 1	1600	C-1	0	0	1.00	1.00	0	10.00	115,098.00	SF	1.00	10.00	1,150,980		ES
TOTAL OF LAND LINE VALUES:													1,150,980		

NOTES RCS87CW6257 KEY ESTERO SHOPS BPMT-1994-0013

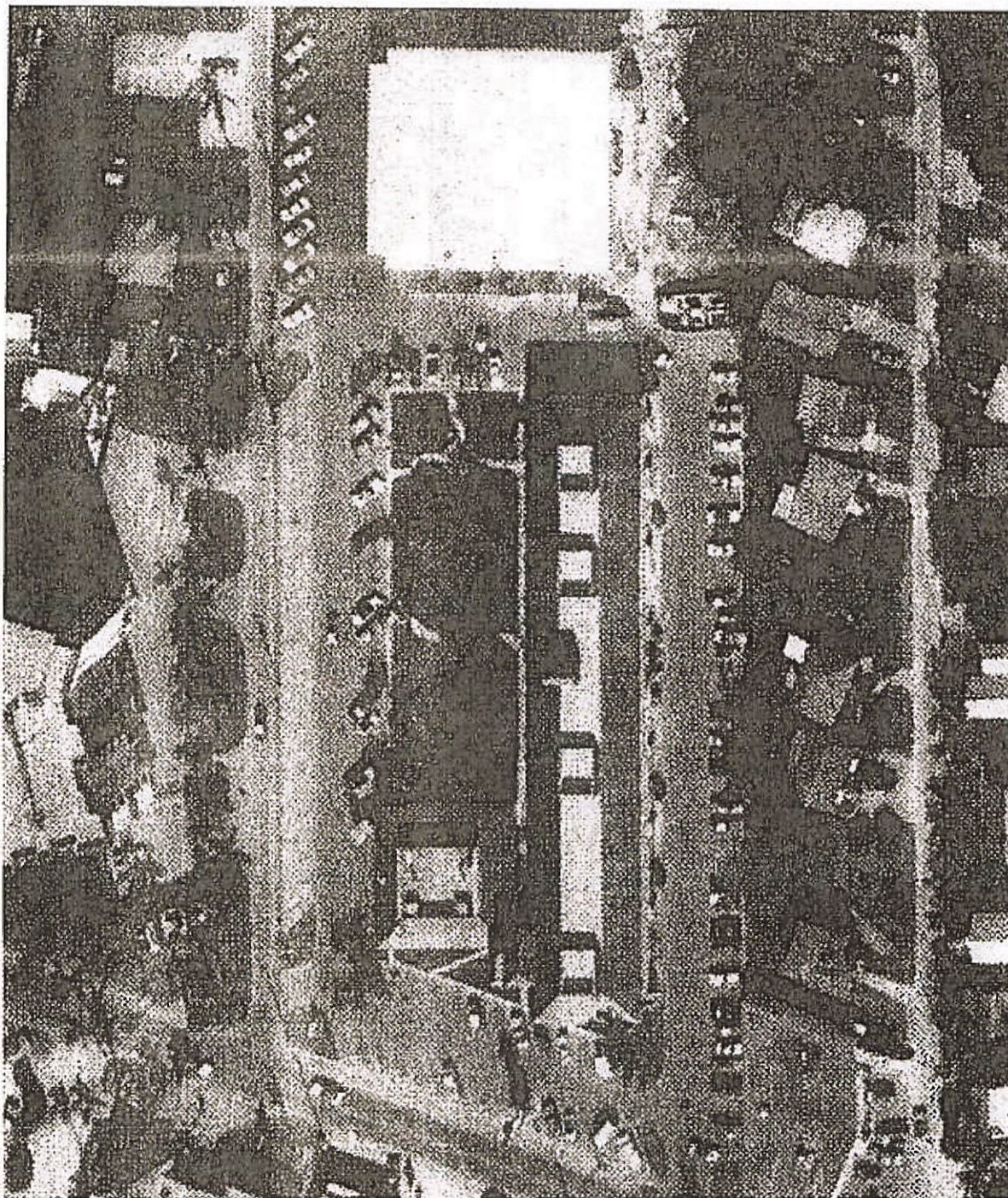
NUMBER	DATE	COCC	ASGN	VALUE	NOTE
PERMIT					
S					
A					
L					
E					
S					

BOOK/PAGE OR INSTRUMENT #	DATE	TYPE	OVR	V	SALE PRICE	VALUE SUMMARY	1997	1996
1885/2396	11/1986	01	01	I		BUILDING MARKET VALUE	872,536	0
1468/1697	11/1980	06	06	I	1,529,000	BUILDING EXTRA FEATURES	7,800	0
						LAND EXTRA FEATURES	51,093	0
						VALUE FOR THIS CARD	931,429	0
						MARKET LAND VALUE	1,150,980	0
						SPECIAL USE LAND VALUE	0	0
						LAND ASSESSED VALUE	1,150,980	0
						INCOME VALUE	1,453,860	0
						OVERRIDE BUILDING VALUE	-	-
						OVERRIDE LAND VALUE	-	-
						TOTAL PARCEL VALUE	2,082,409	0

ALL INFORMATION IS SUBJECT TO CHANGE WITHOUT NOTICE

Printed with C:\Program Files\Lee County Property Appraiser\PARCEL23.DLL Version 4.1.3.201





1977 Lee County Aerial. (Vacant in 1975 Lee County Aerial. No 1976 aerial available.)



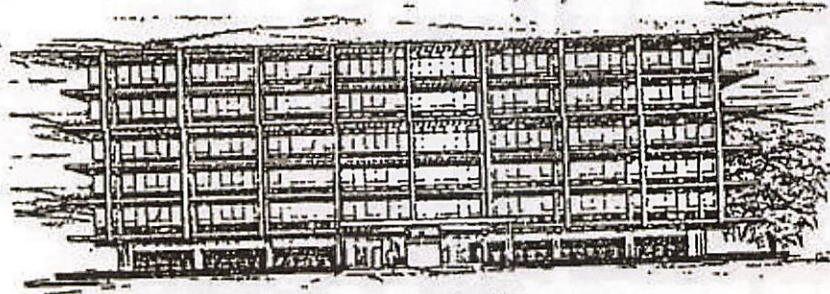
1974 Lee County Zoning Aerial (segment)

1 HCU = $4/2 = 60.7$

Res. Z-1

June 27, 1962

ZONING



County of Lee

FORT MYERS, FLORIDA
33901

REGULATIONS



EXHIBIT

4

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Ex.
4.2

ject from the building wall into the required open space (court only) not more than seven-and-one-half feet (7-1/2').

Stairways, when located in the required open space (court), shall be supported by the necessary columns only, support by a wall is strictly prohibited.

Accessory buildings (where not in violation with the foregoing requirements) may be located not nearer than fifteen feet (15') to the principal structure or structures.

(c) Where structures are more than two (2) stories in height, minimum required spacing shall be forty feet (40').

OTHER SPACING:

No hospital, convalescent home, eleemosynary or philanthropic institution shall be located within one hundred feet (100') of any EU, RU-1 or RU-2 Zones, or within fifty feet (50') of any property under different ownership.

SQUARE FOOT CONTENT:

The minimum square footage for an apartment house, apartment hotel or hotel shall be three (3) times the square feet specified for a single family residence in the area.

CONSTRUCTION:

1. All multiple family structures and accessory buildings thereto shall be of masonry construction.
2. Hotels, apartment hotels, motels, apartment houses and rooming houses shall be constructed or remodeled in accordance with the rules of the Florida Hotel Commission. Minimum lot area required per living unit or guest room shall be five hundred (500) square feet. ~~FLA. Hotel Commission rules min. lot of 500 sq. ft.~~
3. Any building erected in this Zone which exceeds two (2) stories in height shall be of fire resistive construction as specified in the Building Code.
4. Cabanas and other accessory buildings shall comply with the Building Code.

OTHER REQUIREMENTS:

Provisions shall be made for a parking area off the highway right-of-way, as provided elsewhere in these regulations.

SECTION 10

ZONE BU-1 - NEIGHBORHOOD RETAIL BUSINESS DISTRICT:

No land, body of water and/or no structure shall be used or permitted to be used, and no structure shall be hereafter erected, constructed, moved, reconstructed or structurally altered or maintained in any Zone of Classification BU-1, which is designed, arranged or intended to be used or occupied for any purpose, excepting for one (1) or more of the following uses, unless otherwise provided.

Ex 1

USES:

1. Every use permitted in the preceding RU Zones, and unless otherwise specified, all of the following commercial uses shall be limited to retail business:

2. ^{BOWLING ALLEYS & SKATING RINKS SEE PROHIBITED USES}
Antique Shops, Appliance Shops, Aquariums, Art Goods and Bric-a-brac Shops, Artists' Studios, Auditoriums, Automobile Storage, Sale or Hire, Automobile Tires (New) Retail Only, Automobile Washing, Bait & Tackle Shops, Bakery Stores, Retail Only (Baking permitted on premises), Banks, Barber Shops, Bath and Massage Parlors, Beauty Parlors, Bicycle Sales & Repairs, Billiard Rooms and Pool Rooms (Sound-proofed and Air-Conditioned), Boats (Carrying passengers - Rental-Hire-Sale-Docks, No Repairs), Cigar Stores, Commercial Boat Piers or Slips for docking purposes only - Yacht or Boat Storage for laying up, but not for repairs, Conservatories, Contractors' Offices, Curio Shops, Dancing Halls and Academies (Sound-proofed and Air-Conditioned), Drug & Sundry Stores, Employment Agencies, Filling & Gasoline Service Stations (see Restrictions Below), Florist Shops & Landscape Offices, Fruit Stores - Retail (Packing on the premises), Funeral Homes & Mortuaries (no cremation), Furniture Stores, Garage (Community), Grocery Stores, Haberdashery, Hardware Stores, Hat Cleaning and Blocking, Interior Decorating - Costuming - Draperies, Jewelry Stores, Laundries - hand- and self-service, provided that a laundry in this area shall provide a sanitary and safe disposal of waste water and operate without producing smoke, Lawnmowers - Rental, Sales and Service - Leather Goods Stores, Luggage Shops, Mail Order Offices, Meat Markets - no live poultry - Messenger Offices, Millinery Stores, Modistes - Wearing Apparel Stores, Furriers, Music, Radio & Television Shops & Repairs, Newsstands, Notions, Office Buildings, Optical Stores, Paint and Wallpaper Stores, Parking Lots (Commercial), Photograph Galleries, Post Offices, Pottery Sales (no manufacturing), Professional Offices, Pressing Clubs, Cleaning and Laundry Agencies, provided no gasoline or explosives of any kind are stored or used, Shoe Repairing Shops, Shoe Stores, Show Rooms (Display & Sales), Soft Drink Stands, Souvenir Stores, Sporting Goods Stores, Stationery & Book Stores, Tailor Shops, Theatres (no Drive-Ins), Telephone & Telegraph Stations & Exchanges, Tea Rooms, Restaurants, Cafeterias (no entertainment), Waiting Rooms & Ticket Offices for Common Carriers, Confectionary Stores & Ice Cream Stores, Private Clubs, Lodges, Fraternities, Sororities, Package Stores, Shopping Centers ^{Page 28}

3. Material storage yards in connection with retail sales of products where storage is incidental to the approved occupancy of a store use on the premises or where the storage is incidental to the approved occupancy of a contractor's office permitted on the premises; provided all products and materials used or stored are enclosed by a masonry wall or louvered fence, not less than six feet (6") in height (painted and maintained in approved manner) or within a masonry building. Storage of all materials shall not exceed the height of the wall; storage of cars, trucks and equipment used in connection with the permitted trade or business may be permitted within the walls.

4. Propagating and growing plants, shrubbery and trees from an open lot, provided the area so used is set back at least twenty-five feet (25') from all official rights-of-way, except that individual samples for display purposes only may be located not closer than the required building line. Fertilizer, compost, etc., shall be limited to quantities for immediate use, and kept at least one hundred feet (100') from residential buildings in RU and EU Zones.

SPECIAL ADDITIONAL USES:

1. Where the second story of a commercial building is to be used for

COPY

AFFIDAVIT

STATE OF FLORIDA)

COUNTY OF Lee)

BEFORE ME, the undersigned authority, on this 29th day of October, 2019 personally appeared YVONNE LUCAS, who is personally known to me or who produced Florida Driver License as identification, who did take an oath, and who deposes and says as follows:

1. Affiant is providing this affidavit regarding the property located at 1661 Estero Boulevard, Fort Myers Beach, Florida, ("Key Estero Property") currently owned and operated by Key Estero Shops, LLC.
 2. Affiant was an officer (Secretary) of Beate Rotermund, Inc., previously known as Key Estero Ltd., former owner of the Key Estero Property.
 3. Key Estero Ltd. purchased the Key Estero Property in 1980, and at that time, the standard practice of renting surplus parking spaces had been well established. Key Estero Ltd. continued this daily practice without interruption by renting spaces on weekends, holidays and for special events. There was never a nine (9) month interruption of this parking space rental practice from 1980 through 2001.
 4. Affiant has personal knowledge that the management companies of Key Estero Shops (along with occasional outside companies) monitored the number of parking spaces available for rent to make sure the tenants had the requisite amount of parking for their businesses.
 5. Affiant was the selling real estate agent in 2017 when the Key Estero Property was sold to its current owner, Key Estero Shops, LLC.
- FURTHER AFFIANT SAYETH NAUGHT.

Yvonne M. Lucas
YVONNE LUCAS, Affiant

The foregoing instrument was acknowledged before me this 29th day of October, 2019, by Yvonne Lucas. She is personally known to me or has produced Florida Drivers License as identification.

(Notary Stamp)



Laurie L. Plue
Notary Public
Print Name: LAURIE L. PLUE

Attachment: 1661 Estero Blvd Determination Docs (2019-34 : Review of Non-conforming Use Determination for 1661 Estero Blvd)

EXHIBIT

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Town of Fort Myers Beach

USE PERMIT APPLICATION

Florida Building Codes, 6th Edition

To apply for a Use Permit, submit this application and all required documents by email to permits@fmbgov.com or submit in person at 2525 Estero Blvd. Fort Myers Beach, FL 33931.

Signs: If you will be altering or erecting a sign you must apply for a sign permit, this includes tenant panel changes, even if a USE permit is not required.

Business Name: Key Estero Shops, LLC
 Business Location Address: 1661 Estero Boulevard, Fort Myers Beach Unit # _____
 Contact Person: Steven C. Hartsell, Attorney for owner Phone # 239-336-6244
 Email Address: stevehartsell@paveselaw.com

All communication from the Town of Fort Myers Beach regarding your application will be sent to the email address listed.

Provide a brief description and an explanation of the intent of your business, including hours of operation:

Daily paid parking from 8:00AM to 9:00PM.

Check which of the following you are applying for, provide the items requested along with your application.

- ☐ New Occupancy \$100.00, submit a site plan, existing and proposed floor plans. (See submittal requirements)
☐ Tenant Change \$100.00/ \$35.00*, submit a site plan, existing and proposed floor plan. (See submittal requirements)
 Provide the name of the prior tenant: _____
 *If there has been no building inspections in the last 2 years, the fee will be \$100.00
☐ Shared Space - Office \$35.00, provide name of current business name: _____
☐ Shared Space- Other \$100.00, submit a site plan, existing and proposed floor plan. (See submittal requirements)
 Provide the name of the current business: _____
☐ Charter Boat \$35.00, Name of Marina: _____ # Of Passengers: _____
 Provide permission letter from the Marina.

SITE USE (FLOOR AREA, SEATING & PARKING):

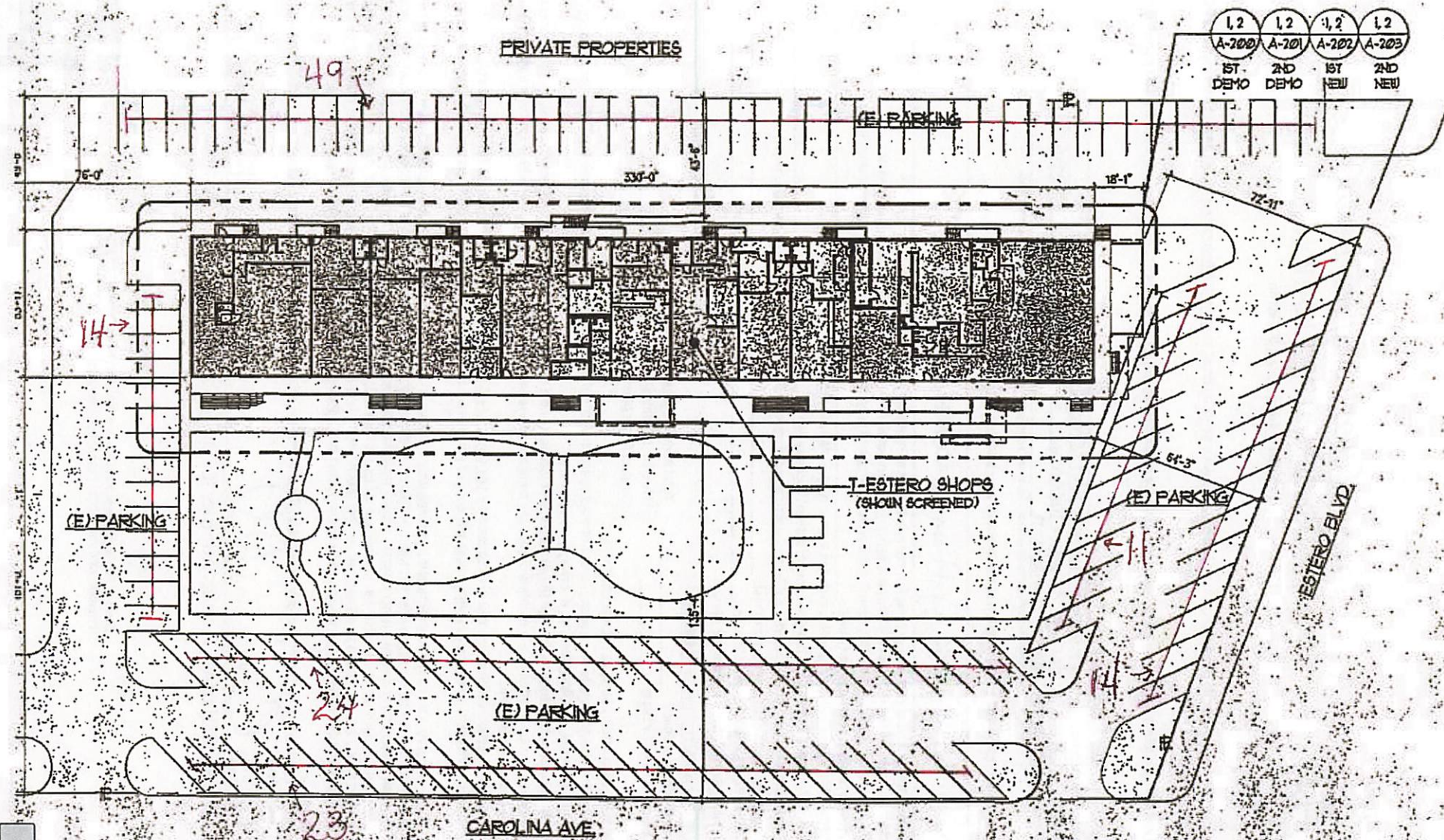
Total Square Footage of Space: _____ Total Parking Spaces: 135
 Parking Spaces assigned by Lease: _____ Number of Seats (Restaurants only): _____
 Outdoor Seats (Restaurants only): _____

ADDITIONAL INFORMATION/ SUBMITTAL REQUIREMENTS

- Floor Plan should include the existing layout of your space. Indicate the size of the space, including existing walls, partitions, counters, electrical layout, plumbing fixtures, doorways, restrooms, etc.
- A site plan should include location of the structure, unit location, and a parking diagram indicating the location of all parking spaces on the property. If your location is in a multiple occupancy complex, please indicate on the parking diagram which spaces are allocated to your unit including handicap.
- Garbage collection verification. You are required by Lee County Ordinance #95-19 to make provisions for garbage collection for your business. This could be a copy of your garbage bill, copy of your lease which states landlord will provide garbage collection services, etc.

THIS PERMIT IS VOID IF THE FIRST INSPECTION IS NOT MADE WITHIN THE SIX (6) MONTHS FROM THE ISSUED DATE 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 MIREPRESENTATION OF THE IMPROVEMENTS IS AMISDEMEANOR 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.

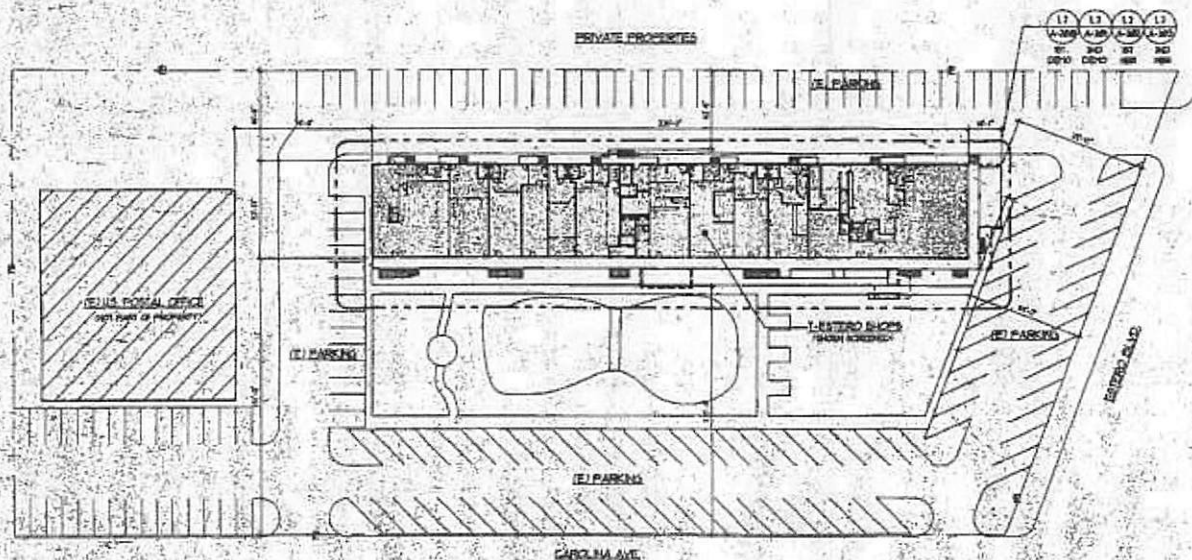
I hereby certify that to the best of my knowledge, the information submitted for this permit is true, correct and complies with Deed of Restrictions
Steven C. Hartsell
 Signature Steven C. Hartsell, Esquire, Attorney for Owner
11-13-2019
 Date



$$49 + 14 + 11 + 14 + 24 + 23 = 135 \text{ spaces}$$

KEY ESTERO SHOPS LLC

1661 ESTERO BOULEVARD
FORT MYERS, FL 33931



GENERAL NOTES:

1. GENERAL CONSTRUCTION SHALL VERIFY ALL EXISTING CONDITIONS APPLICABLE TO THE PROJECT PRIOR TO THE COMMENCEMENT OF ANY WORK. REFER TO THE PROJECT MANUAL FOR ADDITIONAL REQUIREMENTS.
2. GENERAL CONSTRUCTION SHALL VERIFY THE LOCATION OF ALL EXISTING STRUCTURES PRIOR TO THE COMMENCEMENT OF ANY WORK. REFER TO THE PROJECT MANUAL FOR ADDITIONAL REQUIREMENTS.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

1 SITE PLAN
SCALE: 1" = 30'-0"

PROJECT DESCRIPTION

PROJECT NAME: KEY ESTERO SHOPS
PROJECT TYPE: RETAIL
PROJECT LOCATION: 1661 ESTERO BLVD, FORT MYERS, FL 33931
PROJECT OWNER: KEY ESTERO SHOPS LLC
PROJECT ARCHITECT: [REDACTED]
PROJECT ENGINEER: [REDACTED]

FLOOR AREA & BUILDING HEIGHT

FLOOR AREA (TOTAL): 100,000 SQ. FT.
FLOOR AREA (RETAIL): 80,000 SQ. FT.
FLOOR AREA (OFFICE): 20,000 SQ. FT.
BUILDING HEIGHT: 30'-0"

SHEET INDEX

- 1. SITE PLAN
- 2. FLOOR PLAN
- 3. SECTION
- 4. ELEVATION
- 5. DETAIL
- 6. SCHEDULE
- 7. SPECIFICATION
- 8. CONTRACT
- 9. PERMIT
- 10. AS-BUILT

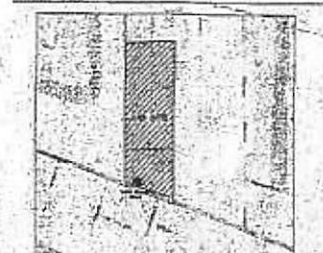
APPLICABLE CODES

- 1. FLORIDA BUILDING CODE (FBC) - 2018 EDITION
- 2. FLORIDA ELECTRICAL CODE (FEC) - 2017 EDITION
- 3. FLORIDA MECHANICAL CODE (FMC) - 2017 EDITION
- 4. FLORIDA PLUMBING CODE (FPC) - 2017 EDITION
- 5. FLORIDA FIRE PREVENTION CODE (FFPC) - 2017 EDITION
- 6. FLORIDA SOILS AND FOUNDATIONS CODE (FSFC) - 2017 EDITION
- 7. FLORIDA WIND RESISTANCE CODE (FWRC) - 2017 EDITION
- 8. FLORIDA AIR CONDITIONING AND REFRIGERATION CODE (FACRC) - 2017 EDITION
- 9. FLORIDA GAS PIPING CODE (FGPC) - 2017 EDITION
- 10. FLORIDA SEWER AND WASTEWATER CODE (FSWWC) - 2017 EDITION

CONSULTANTS

- 1. ARCHITECT: [REDACTED]
- 2. ENGINEER: [REDACTED]
- 3. PLUMBER: [REDACTED]
- 4. ELECTRICIAN: [REDACTED]
- 5. MECHANICAL: [REDACTED]
- 6. SOILS: [REDACTED]
- 7. FOUNDATIONS: [REDACTED]
- 8. WIND: [REDACTED]
- 9. AIR CONDITIONING: [REDACTED]
- 10. GAS: [REDACTED]
- 11. SEWER: [REDACTED]
- 12. WASTE: [REDACTED]

VICINITY MAP



Reviewed by TAG

ACSA

G-001

SITE PLAN, SHEET INDEX, VARIATION MAP, CONSULTANTS, PROJECT DESCRIPTION

KEY ESTERO SHOPS LLC
1661 ESTERO BLVD
FORT MYERS, FL 33931

1 OF 16

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Town of Fort Myers Beach

Agenda Item Summary Blue Sheet Number: 2019-35

1. Requested Motion:

Meeting Date: Dec 10, 2019

Recommend approval / denial of 2639-41 Estero Boulevard Rezoning from RC to IN, and find that it meets/does not meet, the requirements for rezoning as outlined in the staff report.

Why the action is necessary:

This is provided to the LPA for input and comments for Town Council.

What the action accomplishes:

Provides the public and LPA an opportunity to review and comment on the proposed changes to schedule of uses.

2. Agenda:

Public Hearings

3. Requirement/Purpose:

4. Background:

The applicant/ Town is requesting approval of rezoning of the property located at 2639-41 Estero Blvd from Residential Conservation (RC) to Institutional (IN).

The subject property includes 2 platted lots, lot 18 and lot 19, Block C, Winkler subdivision (see Exhibit A). The subject property was a 3- story multi-family building and was demolished in 2005 (Permit # DEM2005-00354, under Lee County).

The subject parcel is approximately 7500 $\pm$ s.f. (0.17 $\pm$ ac) It is vacant for more than 10 years and the town acquired the parcel in December 2018. The applicant/ Town is seeking to rezone the property from Residential Conservation (RC) to Institutional (IN) to use the parcel for public use. This parcel will be part of the Bay Oaks Master Concept Plan that is being developed by DRMP, Inc.

The applicant requests to approve rezoning on the property to IN because the existing RC zoning district is designed to recognize older neighborhoods for primarily residential uses and do not contain provision for development related to a public use. The proposed IN zoning district is designed to provide suitable regulations for Civic group uses including but not limited to churches, civic building, schools, government buildings, parks, public recreation facilities, and potentially cultural facilities. The proposed rezoning is consistent with Town's Comprehensive Plan.

Staff recommends approval of the requested rezoning. The proposed rezoning will assist the Town in meeting present and future needs and general welfare of the citizens of Town of Fort Myers Beach.

Attachments:

Staff Report (DOCX)

Exhibit A_Survey (PDF)

Exhibit_Application_PH-C (PDF)

Exhibit_Public Hearing Application (PDF)

5. Alternative Action:

30 min



Fort Myers Beach Town Council

Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931

Minutes

Tuesday, January 21, 2020

9:00 AM

FINAL

I. CALL TO ORDER

The meeting was called to order at 9:00 AM by Mayor Anita Cereceda

1. Roll Call

Members present: Mayor Cereceda, Vice Mayor Murphy, Council Member Butcher and Council Member Hosafros.

Excused: Council Member Shamp

II. INVOCATION

Town Clerk Mayher.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Publix requested that the CPD application be removed. Vice Mayor Murphy requested that B. under Administrative Agenda be moved after the Consent Agenda.

RESULT:	APPROVAL [UNANIMOUS]
MOTION BY:	Rexann Hosafros, Council Member
SECOND BY:	Bruce Butcher, Council Member
AYES:	Anita Cereceda, Rexann Hosafros, Bruce Butcher, Ray Murphy

V. PUBLIC COMMENT

I certify that this document is
a true copy of the original

Signed: *[Signature]*

Date: *2/1/24*

Eve Haverfield

•Ms. Haverfield stated that the sea turtle organizations were ready to

4 + tidix3

update their sea turtle lighting ordinance. She thanked the Town for initiating the process. She proposed additional language and requested an opportunity to meet with staff before the second reading.

- Kurt Kroemer addressed the dune walkover application. He explained that accretion and a neighbor's fence eventually blocked their access to the lagoon. He indicated that the full final order was not included in the first hearing but was included in their current packet.

- Eddie Rood requested a dune walkover rehearing based on what was previously submitted, opining that some of the material was erroneous. He stated that they worked with the DEP (Department of Environmental Protection) on several occasions and questioned why they would approve the walkover if they believed it would harm wildlife.

- Cindy Johnson shared information regarding street lights, stating that the amber lights were included in the free lights plan. She discussed meeting with FPL (Florida Power & Light) and FWC (Fish & Wildlife Conservation) representatives. Public Works Director Chelsea O'Riley was working with distributors regarding lights. Ms. Johnson indicated that they were told to conduct a photometric study with a usable light.

- Bill Veach explained that the street lights provided by FPL were not free; it was a 20-year commitment and functioned like a lease. He discussed the dune walkover and noted that the DEP was comprised of political appointments, unlike the Audubon, which was against the dune walkover.

- Gary Lau, builder, supported the dune walkover and requested that the rehearing be approved.

- Mary Rose Spalletta, resident, addressed the dune walkover. She discussed exercising stewardship and noted that over the past 50 years, 70% of all the birds were gone worldwide. She described the risks to migratory birds and commented that the critical wildlife area was internationally known for its birds. Ms. Spalletta remarked that the critical wildlife area deserved their stewardship and she urged rejection of the proposal.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Mayor Cereceda congratulated everyone involved in the Putt, Pub and Crawl.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Community Resource Advisory Board (CRAB)

Sheena Stockton, CRAB Chair, questioned the status of the app and requested direction on agenda topics. She brought up the possibility of suspending meetings in the meantime. Town Manager Hernstadt noted that interviews for the PIO (Public Information Officer) position were scheduled and the app would be included with the marketing program.

X. PUBLIC HEARINGS**A. Second Reading and Public Hearing: Ordinance 19-14, Publix CPD**

Second reading and hearing to adopt Ordinance 19-14 Ordinance 19-14 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REPLACING TOWN OF FORT MYERS BEACH RESOLUTION 98-11, AND AMENDING THE SCHEDULE OF USES FOR PUBLIX CPD; PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS OF LAW; AND PROVIDING FOR AN EFFECTIVE DATE

Publix requested that the CPD application be deferred.

B. Second Reading and Public Hearing: Ordinance 19-16, LDC Amendments to Division 17

Open the second public hearing for Ordinance 19-16, LDC Amendments to Division 17, Fences, Walls and Entrance Gates, and continue the public hearing to February 3, 2020 at 9:00 AM .

Community Development Planner Sara Propst requested a continuance due to an advertising error.

Council Member Butcher expressed concern regarding the height of fences and the gate requirement. He noted that some shrubs on Estero Blvd. were 10 feet tall and conflicted with the four-foot fence regulation.

No public comment.

MOTION: Vice Mayor Murphy moved to set the second public hearing to February 3, 2020 at 9:00 a.m.; second by Council Member Butcher.

VOTE: Motion approved; 4-0.

RESULT:	ADOPTED [UNANIMOUS]
MOTION BY:	Ray Murphy, Vice Mayor
SECOND BY:	Bruce Butcher, Council Member
AYES:	Anita Cereceda, Rexann Hosafros, Bruce Butcher, Ray Murphy

C. Review of Non-conforming Use Determination for 1661 Estero Blvd

Consistent determination relative to the Town of Fort Myers Beach Land Development Code as a commercial parking lot / permanent shared parking at 1661 Estero Blvd.

Town Attorney Herin, Jr. stated that the hearing was properly advertised and he swore in those providing testimony. Ex parte communication: Council Member Hosafros attended the LPA (Local Planning Agency) meeting and Mayor Cereceda watched the LPA meeting and spoke to LPA Members.

Community Development Director Jason Green reviewed the background as stated on the Blue Sheet.

Steve Hartsell from Pavese Law Firm represented the applicant. He utilized PowerPoint for his presentation. Slides included LDC (Land Development Code) Section 34-676(c); The Parking Problem; Property Appraiser's Card; 1974 and 1977 Lee County Zoning Aerials; Zoning Regulations; Parking Lots (Commercial); Non-conforming Use; Affidavits from Yvonne Lucas and Carmen Naccarato and a 1975 Site Plan. He indicated that it was consistent with the past and present goals of the beach to allow the parking to continue. He stated that the parking lot was a lawful use when the Key Estero Shops were created and it met the requirement for a non-conforming use. He commented that only four of twenty units were occupied and the revenue from the parking spaces paid for the parking attendant. Attorney Hartsell stated that if the request was denied, visitors would park for free, whether they were customers or not.

Vice Mayor Murphy questioned the applicant's long-term intention for the property. Attorney Hartsell replied it would remain a shopping center if he could get tenants into it. He noted that the applicant was remodeling the building and new vegetation was added. Vice Mayor Murphy questioned whether the applicant was advertising the property to lease.

Council Member Butcher noted there were no affidavits regarding renting parking between 2001 and 2017, and commented that he did not see a parking attendant in 2012. He had been told that owners of the shops complained that their customers could not find a place to park because the applicant was renting them out, and wondered whether that was a reason for vacant units. He questioned why the applicant did not apply for a special exception.

Attorney Hartsell stated that the use was grandfathered and did not require additional approvals or conditions. He commented that certain conditions could be appropriate.

Mayor Cereceda questioned how long he thought a non-conforming use lasted. Attorney Hartsell replied that it was allowed to continue until it was no longer effective. Mayor Cereceda compared the commercial parking lot use versus a parking lot that served businesses. Attorney Hartsell replied that commercial parking was recognized as a use and if it was not permissible years ago, Lee County would have stopped it. He indicated that allowing for payment for parking spaces was the essence of a commercial parking lot and they requested permission to continue that use.

Public comment:

•Dan Allers, LPA Member, explained why the LPA denied the request. He indicated that the final vote was 6-1.

Public comment closed.

Council Member Hosafros noted that other people had to bring their properties into compliance and that it was not a historic use because the affidavit stated that they rented spaces on weekends, holidays and special events only. She testified that she was never charged for parking at that location before 2017. She stated there were other options they could follow, but they did not qualify for a historic use for non-conforming.

Council Member Butcher was willing to allow a certain number of parking spaces

with a public restroom.

Council Members disagreed with a non-conforming use and agreed that they should request a special exception because the non-conforming use was not continually in place.

Town Manager Hernstadt reviewed the special exception process available to the applicant.

MOTION: Council Member Hosafros moved that the request was not consistent with the LDC and to deny the request for a non-conforming use; second by Council Member Butcher.

VOTE: Motion approved; 4-0.

RESULT:	ADOPTED [UNANIMOUS]
MOTION BY:	Rexann Hosafros
SECOND BY:	Bruce Butcher, Council Member
AYES:	Anita Cereceda, Rexann Hosafros , Bruce Butcher, Ray Murphy
EXCUSED:	Joanne Shamp

Recess: 10:50 AM - Reconvene: 11:00 AM

D. First Reading and Public Hearing: Ordinance 20-03, DCI20190073 Rezoning of 2639-41 Estero Boulevard

First Reading and public hearing, Ordinance 20-03, Rezoning 2639-2641 Estero Boulevard. A request to approve Institutional (IN) rezoning. ORDINANCE NO. 20-03 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO 0.17 +/- ACRES OF THE CURRENT ZONING MAP FOR A PROPERTY LOCATED 2639-2641 ESTERO BOULEVARD FORT MYERS BEACH FROM RESIDENTIAL COMMERCIAL (RC) ZONING DISTRICT TO INSTITUTIONAL (IN) ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS OF LAW; AND PROVIDING FOR AN EFFECTIVE DATE

Council Member Hosafros read the title of the ordinance. Town Attorney Herin, Jr. swore in those providing testimony. Ex parte communication: Council Member Hosafros conducted a site visit.

Planning Services Planner Kalyani Bhutada reviewed the background of the request.

Public comment:

- Amy and Marty Folliard requested to be involved in the plans for the property since they lived next door.

- Dan Allers supported the rezoning request.

Public comment closed.

Council Member Hosafros noted that the second hearing would be February 18, 2020 at 9:00 a.m.

RESULT:	ADOPTED [UNANIMOUS]
MOTION BY:	Ray Murphy, Vice Mayor
SECOND BY:	Rexann Hosafros, Council Member
AYES:	Anita Cereceda, Rexann Hosafros, Bruce Butcher, Ray Murphy
EXCUSED:	Joanne Shamp

E. LDC Text amendments to Ch. 34 and 6, development within the Environmentally Critical Zoning District

First Reading of Ordinance 20-02, Amendments to LDC Ch. 34 and 6 and definitions related to coastal development and uses within the Environmentally Critical zoning district. ORDINANCE NO. 20-02 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-652 – EC (ENVIRONMENTALLY CRITICAL) ZONING DISTRICT, SECTION 34-1575 – COASTAL ZONES, AND SECTION 6-366 – LOCATION OF CONSTRUCTION NEAR BEACHES – OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule the second and final hearing for February 18, 2020 at 9:00 AM.

Town Clerk Mayher read the title of the ordinance. Planner Propst reviewed proposed changes to the ordinance.

Council Member Butcher questioned why they would allow dune walkovers as a special exception. Planner Propst replied that dune walkovers could be allowed with elevation changes or to prevent damage to vegetation. She stated that boardwalks were removed.

No public comment.

RESULT:	ADOPTED [UNANIMOUS]
MOTION BY:	Rexann Hosafros, Council Member
SECOND BY:	Ray Murphy, Vice Mayor
AYES:	Anita Cereceda, Rexann Hosafros, Bruce Butcher, Ray Murphy
EXCUSED:	Joanne Shamp

F. Resolution 20-02 Rescinding Resolution 19-35, Vacating Portions of Right-of-Way and Portions of Plats

Resolution 20-02 Rescinding Resolution 19-35, which vacated portions of right-of-way and portions of the Crescent Park plat

Matt Roepstorff from Gray Robinson represented the Gannon family who owned the Beacon Motel and an adjacent vacant lot. They agreed with rescinding the resolution.

1. **Requested Motion:****Meeting Date: Jan 21, 2020**

Consistent determination relative to the Town of Fort Myers Beach Land Development Code as a commercial parking lot / permanent shared parking at 1661 Estero Blvd.

Why the action is necessary:

The property owner has presented information related to the historical use of the property purportedly as a commercial parking lot. Staff has reviewed the submitted information and does not find the information complete and does not find the suggested use (permanent shared parking / commercial paid parking lot) should be recognized as a non-conforming or conforming use.

What the action accomplishes:

Staff has agreed to allow the property owner to proceed with review by the LPA and Town Council for input and final determination.

2. **Agenda:**3. **Requirement/Purpose:** 4. **Submitter of Information:**

PUBLIC HEARINGS

Other

Community Development

5. **Background:**

Key Estero Shops, located at 1661 Estero Boulevard, is under Code Enforcement action related to the selling or renting of parking spaces intended for the commercial square footage on-site. The property owner believes the use was approved previously through Lee County and that they have a right to continue the use. The property does not qualify for a Use Permit due to the LDC requirement that all of the development standards for a permanent shared parking lot shall be met. The property owner has not provided documentation showing that the parking lot meets those requirements. Landscape buffers are an example of items that can't meet the current Town LDC. A variance option was suggested in the interim of the LDC potentially being updated and in case the update doesn't resolve all of their non-conforming site development issues. The property owner has not pursued that option.

Review of the provided material indicates the previous Lee County zoning district did permit the suggested use, commercial paid parking lot; however, the site plan and other approvals did not include that use. Furthermore, the parking spaces were not delineated for commercial parking versus the commercial/retail use within the building.

The property owner has provided a series of Exhibits. Exhibit 6.3 does not offer any evidence of use and parking calculations. Previous discussions with the property owner's attorney included materials that had more details, but clearly indicated the parking calculations based on the amount of commercial/retail building square footage. That plan has not been included.

The Town Council may find that the request is not consistent or may determine the issuance of a Use Permit is consistent with the Land Development Codes.

Attachments:

1661 Estero Blvd Determination Docs (PDF)

I certify that this document is
a true copy of the original

Signed: *ABale*

Date: 8/21/24

6. Alternative Action:

7. Management Recommendations:

8. Recommended Approval:


Jason Green, Community Development Services

1/15/2020


John R Herin Jr Esq., Town Attorney

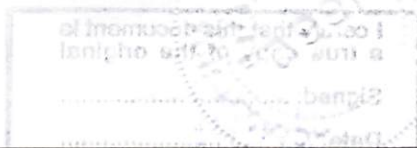
1/15/2020


Michelle Mayher, Town Clerk

1/15/2020


Roger Hernstadt, Town Manager

1/15/2020



PAVESE LAW FIRM

Town of Fort Myers Beach

NOV 18 2019

STEVEN C. HARTSELL
Florida Bar Board Certified Attorney in
Condominium and Planned Development Law
Direct dial: (239) 336-6244
Email: SteveHartsell@paveselaw.com

Received by:

1833 Hendry Street, Fort Myers, Florida 33901 | P.O. Box 1507, Fort Myers, Florida 33902 | (239) 334-2195 | Fax (239) 332-2243

November 15, 2019

Mr. Jason Green
Community Development Services
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Via email: green@fmbgov.com

**RE: Request for Nonconforming Use Determination for
Key Estero Shops, 1661 Estero Blvd. and
Request to Continue CE19-0026 (Our File #93234.001)**

Dear Jason:

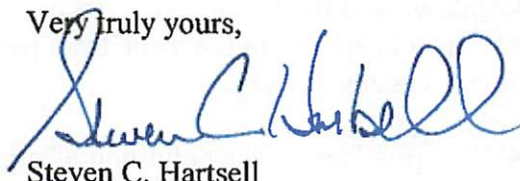
Thank you for taking the time to meet with me on November 7th and to review the evidence and documents that I have compiled with regard to demonstrating that a commercial parking lot with paid parking per space is a lawful nonconforming use at the Key Estero Shops property. As we discussed, this seems to be a decision that is outside the scope of what the staff is able to determine without direction from the Town Council. The Town Manager's suggestion that this should start at the LPA level in order to provide the Town Council with a recommendation also makes sense and we appreciate that approach.

Consequently, I am requesting that you schedule this before the LPA at the next hearing. I would also request that the pending code enforcement hearing (Case # CE19-0026) scheduled for November 21, 2019, be continued for 60 days in order to give us the opportunity to get before the LPA for its recommendation and then take that recommendation to the Town Council.

Please let me know if I need to be present for that Code Enforcement continuance request hearing or whether that continuance can be done without our being present.

If you have any questions, or need any documentation in addition to what is included, please feel free to contact me. Thank you.

Very truly yours,



Steven C. Hartsell

SCH/llp
Enclosures

cc: Carmen Naccarato, Key Estero Shops, LLC
Lora Naccarato

PAVESE LAW FIRM

STEVEN C. HARTSELL
Florida Bar Board Certified Attorney in
Condominium and Planned Development Law
Direct dial: (239) 336-6244
Email: SteveHartsell@paveselaw.com

1833 Hendry Street, Fort Myers, Florida 33901 | P.O. Box 1507, Fort Myers, Florida 33902 | (239) 334-2195 | Fax (239) 332-2243

November 15, 2019

Request for Determination of an Existing Nonconforming Use for a Commercial Parking Lot to allow daily paid parking to continue at the Key Estero Shops, 1661 Estero Blvd., Fort Myers Beach.

The Key Estero Shops property is located at 1661 Estero Blvd., Fort Myers Beach in the Downtown District. Since 1980, and before, while the property was under Lee County zoning jurisdiction, extra parking spaces have been used for daily paid parking as was permitted by Lee County. Even after the Town incorporated, the daily paid parking has continued at Key Estero Shops without problems.

According to LDC §34-671 the purpose of the Downtown District is to create the desired quality and character for the center of the pedestrian-oriented commercial activities. LDC §34-673 shows that the Downtown District is planned as a "park-once" district with preference given to pedestrian movement within the district. Parking space reductions are provided for, parking lot interconnections are encouraged, and in some places (Old San Carlos Blvd.) individual owners control all rights of using their lots and may choose to allow the wider use of their parking spaces for a fee [§34-673 (c)(3)]. The whole context of the Downtown District encourages the provision of more parking spaces to facilitate the pedestrian activity in the district. This is further underscored by LDC §34-2019 - Other use of parking lots:

(a) Parking spaces that are not in daily use and are located in parking lots having ten or more parking spaces and meeting the other requirements of this division may be rented to the general public during peak periods.

The Key Estero Shops parking lot has more than 10 spaces and also fits the requirements of §34-2019(a) even if it were not already an existing nonconforming use from the Lee County zoning. It similarly fits into the intent of the Downtown District to provide as much flexibility as possible in favor of providing parking spaces for visitors who come to Fort Myers Beach. So far, lack of parking doesn't prevent people from coming to the Beach with expectations of being able to park and shop, eat or go to the beach. But when they arrive, if they cannot find adequate parking, they will park illegally in areas where there shouldn't be parking, or they will park in parking lots where businesses need that parking for customers. Consequently, owners of buildings with parking lots near Downtown and the beachfront must pay employees to monitor the use of the parking lot. Those added expenses must be offset, and revenue from parking space rental helps offset the lot monitoring costs that are otherwise necessary anyway.

LDC Sec. 34-3202 provides for the definition of a nonconforming use:

(c) Nonconforming use. For purposes of this article, the term "nonconforming use" means a use or activity which was lawful prior to the adoption of any ordinance from which this code is derived, ..., but which fails, by reason of such adoption, ..., to

conform to the use requirements where the property is located. See division 3 of this article for regulations on nonconforming uses. [Emphasis Supplied.]

Sec. 34-3203 - Illegal buildings, uses and lots, provides that:

If a building, use, or lot was not lawful when created ..., it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses or lots. [Emphasis Supplied.]

Daily paid parking at the Key Estero Shops parking lot has been going on for decades before the Town incorporated and continued afterwards. As shown below, Commercial Parking Lot is a use that was lawful under the prior Lee County zoning and deserves the protection provided by the code for nonconforming uses. The owner of Key Estero Shops submits that by the definition of a nonconforming use and its intent, the continued paid parking for a fee in this parking lot should be recognized as a lawful nonconforming use since it was not illegal when Key Estero Shops was built. The revenue from paid parking was part of the reason it was purchased and can continue to operate. Without that revenue the Key Estero Shops cannot continue to successfully operate.

The Key Estero Shops property was located in a Lee County Zoning District which permitted a Commercial Parking Lot where it would have been lawful to have daily paid parking spaces and that use should be recognized as a nonconforming use.

1. The Key Estero Shops building was constructed in 1976 according to the Property Appraiser's Office website. *Exhibit 1*, Lee County Property Appraiser's Card for 1661 Estero Blvd. shows it was built in 1976.
2. The Building was finished by 1977 according to the most recent Lee County Aerial after 1975. *Exhibit 2*.
3. The Lee County Zoning that was in place in 1976 when this building was first constructed was the BU-1 (Business One) District according to the 1974 Lee County Zoning Aerial which shows this Key Estero Shops site was designated as BU-1. *Exhibit 3*.
4. In 1976 when this building was constructed, the Zoning Regulations in effect were the original Zoning Regulations adopted as Resolution Z-1. An excerpt from those original zoning regulations is attached as *Exhibit 4*. Section 10 (at Ex. 4.3) shows the regulations in effect for the BU-1/Neighborhood Retail Business District. Page 25 (at Ex. 4.4) contains the Uses permitted in the BU-1 District. The middle of a very long list includes: Parking Lots (Commercial). Those are lots that allow for paid parking.
5. The lawful Commercial Parking Lot use of the property at this location is also demonstrated by its long term activity on this site. A sworn affidavit from Yvonne Lucas, an officer in the corporation that owned the property from 1980 through 2001 shows that it was a standard practice to rent the surplus parking spaces daily, weekends, holidays and special events. *Exhibit 5*. She had personal

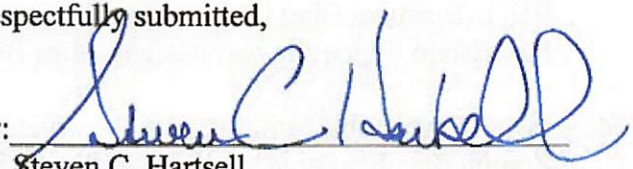
Town of Fort Myers Beach
 Request for Nonconforming Use Determination
 November 15, 2019
 Page 3

knowledge of those continuous activities prior to the purchase of the property and for the 21 years during which her corporation owned it and managed the parking lot.

6. Carmen Naccarato is the Manager of the Key Estero Shops, LLC, a Michigan Limited Liability Company, the present owner of the Key Estero Shops property.
7. Carmen Naccarato is familiar with the property from having been a longtime visitor since at least 2001 when he became aware of this site and became interested in purchasing it. During that entire time he was aware that it had parking spaces being rented out on a daily basis while also providing parking lot security and monitoring through an employee who rented the extra parking spaces to daily visitors. He purchased the property in reliance upon that revenue continuing because that revenue stream is critical to his ability to successfully operate the Key Estero Shops.
8. Presently, only 5 of 20 units at Key Estero Shops are being leased out, so there is an abundance of extra parking spaces available to rent on a daily basis. Mr. Naccarato is required to have a parking lot attendant to monitor to keep the lot from being filled up with beachgoers who are not using the spaces as customers of the tenants. The attendant makes sure that there are sufficient spaces available for tenants and tenant customers while also allowing paid parking to use the extra spaces that are available.
9. To the extent that it is necessary, **Exhibit 6** is a proposed application for a USE PERMIT to allow paid parking on a daily basis, along with a site plan prepared in 2017 which shows the Key Estero Shops building and first floor units, along with the parking spaces that are available and comprise a total of 135 spaces.

In conclusion, on behalf Key Estero Shops and Mr. Naccarato, we submit that that the evidence shows that daily paid parking was permissible under the Lee County Zoning Regulations in 1976 when Key Estero Shops was first built, and that it has been used for daily paid parking regularly and continuously since that time, and that this use is a lawful nonconforming use which is consistent with the intent and purposes of the Downtown District and deserves the protections of nonconforming uses under the Land Development Code.

Respectfully submitted,

By: 

Steven C. Hartsell
 Pavese Law Firm
 Fla. Bar.# 0305030

SCH/lip

Attachments: *Exhibits as referenced above*

Attachment: 1661 Estero Blvd Determination Docs (2020-15 : Review of Non-conforming Use Determination for 1661 Estero Blvd)

1997 HISTORICAL

BUILDING CHARACTERISTICS

CARD 1 of 1

Folio 10227974



Cell ID 126014624

PARCEL NO: 19-46-24-W4-00402.0010

OWNER'S NAME
BEATE ROTERMUND INC

OWNER'S ADDRESS
1661 ESTERO BLVD STE 9
FT MYERS BEACH, FL 33931

ELEMENT	CODE	TYPE / DESCRIPTION
EXTERIOR WALL	17	CB STUCCO
EXTERIOR WALL	0	NONE
ROOF STRUCT	4	WOOD TRUSS
ROOF COVER	10	WOOD SHINGLE
INTERIOR WALL	4	PLYWOOD PANEL
INTERIOR WALL	5	DRYWALL
INT FLOOR	14	CARPET
INT FLOOR	0	NONE
HEATING FUEL	4	ELECTRIC
HEATING TYPE	4	FORCED AIR-DUCT...
AIR COND TYPE	3	CENTRAL
QUALITY	3	AVERAGE
BEDROOMS	N/A	PCT COMMON WALL N/A
BATHROOMS	78	NONSTD WALL HT 12
STORIES	2	AVG RMS/FLR 40
COMM HVAC	1	HEAT/AIR PACKAGE
STRUCT. FRAME	3	MASONARY
CEILING/WALL	5	CEILING & WALL FIN

AREA	YEAR	GROSS	PCT	ADJ	CAP	MARKET
TYPE BUILT		AREA	BASE	AREA		VALUE
BAS	1976	33,440	100	33,440		809,837
FST	1976	584	50	282		6,829
FOP	1976	7,558	30	2,267		54,901
UOP	1976	198	20	40		969
TOTALS:		41,760		36,029		872,536

SITE ADDRESS	1661 ESTERO BLVD 33931
ASSESSOR	ES
INSPECTOR	46
INSPECTION DATE	Wednesday, May 21, 1997
EFF AREA	36,029
STRUCT INDEX	0.86
EFF BASE RATE	37.84
REPLACEMENT COST NEW	1,363,337
ACTUAL YR BLT	1976
EFF YR BLT	1976
ECON OBS	0%
PUNC OBS	0%
NORMAL DEPR	36%
REMAINING WORTH	64%
DEPRECIATED BLDG VAL	872,536
IMP TYPE	39 SHOPPING CENTER - COMMUNITY
MODEL	4 COMMERCIAL

LEGAL DESCRIPTION
HILLS T P SUBD PB 3 PG 84
PT LT 11 DESC OR 1468
PG 1697 LESS N 275 FT

DOR CODE ?? (Not Found)
NBHD CODE 07-105.0
(1.00) CRESCENT ST TO LOVERS LANE

Plan not available

LINE CODE	NAME	DESCRIPTION	LENGTH	WIDTH	UNITS	UNIT PRICE	PCT COND	U/S	YEAR	ANN DEPR	DEPR ADJ	CAP FLAG	MICT VALUE
E 1	0000 BLK TOP	BLACK TOP, IMPROVED	0.00	0.00	56,778.00	1.50	1.00	L	1976	2.00	0.60		51,093
X 2	0000 ELEV P	ELEVATOR, PASSENGER	0.00	0.00	2.00	6,500.00	1.00	B	1978	2.00	0.60		7,800

F E A T U R E S													
TOTAL OF EXTRA FEATURE VALUES:													
58,893													

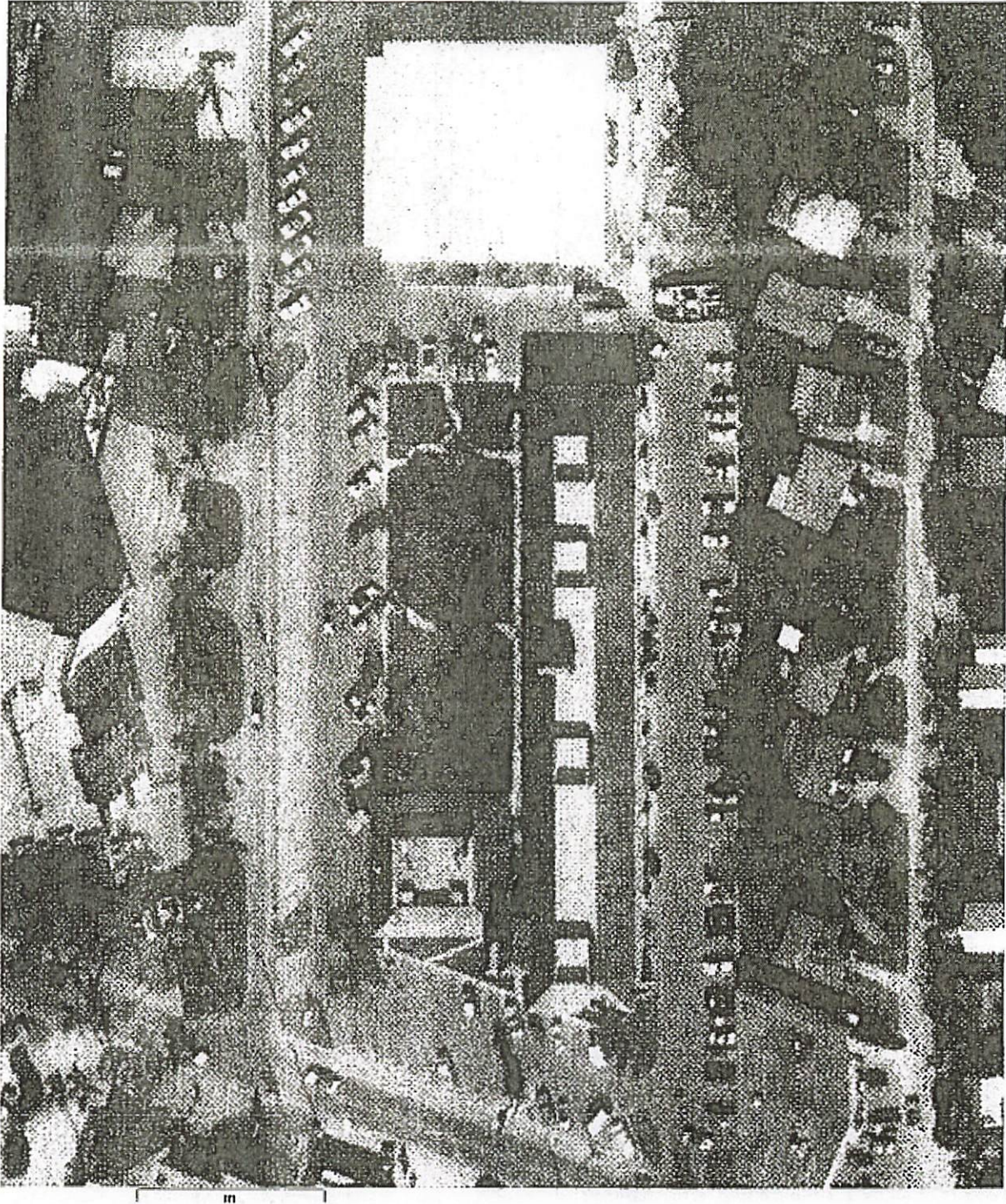
NOTES RCS87CW6257 KEY ESTERO SHOPS BPMT-1994-0013

NUMBER	DATE	CONC	ASGN	VALUE	NOTE	
PERMIT						
SALLES						
BOOK/PAGE OR INSTRUMENT #	DATE	TYPE	OVR	V	SALE PRICE	
1885/2396	11/1986	01	01	I		
1468/1697	11/1980	06	06	I	1,529,000	
VALUE SUMMARY					1997	1996
BUILDING MARKET VALUE					872,536	0
BUILDING EXTRA FEATURES					7,800	0
LAND EXTRA FEATURES					51,093	0
VALUE FOR THIS CARD					931,429	0
MARKET LAND VALUE					1,150,980	0
SPECIAL USE LAND VALUE					0	0
LAND ASSESSED VALUE					1,150,980	0
INCOME VALUE					1,453,860	0
OVERRIDE BUILDING VALUE					-	-
OVERRIDE LAND VALUE					-	-
TOTAL PARCEL VALUE					2,082,409	0



Packet Pg. 325

10.C.a



1977 Lee County Aerial. (Vacant in 1975 Lee County Aerial. No 1976 aerial available.)



1974 Lee County Zoning Aerial (segment)

EXHIBIT

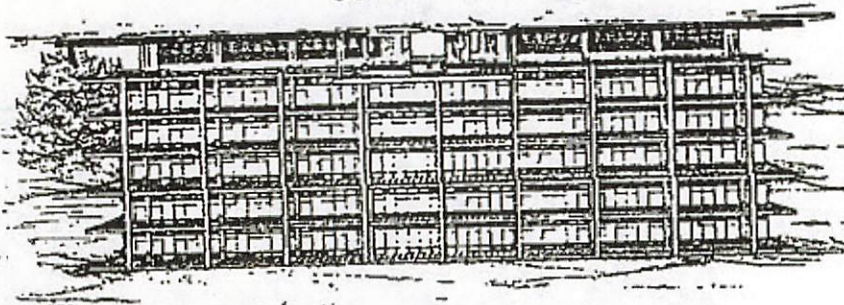
4

Attachment: 1661 Estero Blvd Determination Docs (2020-15 : Review of Non-conforming Use Determination for 1661 Estero Blvd)



REGULATIONS

County of Lee
FORT MYERS, FLORIDA



ZONING

June 27, 1962

Res. Z-1

1 Huc = 1/2 = 60 ft

INDEX TO LEE COUNTY ZONING REGULATIONS

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Ex.
4.2

ject from the building wall into the required open space (court only) not more than seven-and-one-half feet (7-1/2').

Stairways, when located in the required open space (court), shall be supported by the necessary columns only, support by a wall is strictly prohibited.

Accessory buildings (where not in violation with the foregoing requirements) may be located not nearer than fifteen feet (15') to the principal structure or structures.

(c) Where structures are more than two (2) stories in height, minimum required spacing shall be forty feet (40').

OTHER SPACING:

No hospital, convalescent home, eleemosynary or philanthropic institution shall be located within one hundred feet (100') of any EU, RU-1 or RU-2 Zones, or within fifty feet (50') of any property under different ownership.

SQUARE FOOT CONTENT:

The minimum square footage for an apartment house, apartment hotel or hotel shall be three (3) times the square feet specified for a single family residence in the area.

CONSTRUCTION:

1. All multiple family structures and accessory buildings thereto shall be of masonry construction.
2. Hotels, apartment hotels, motels, apartment houses and rooming houses shall be constructed or remodeled in accordance with the rules of the Florida Hotel Commission. Minimum lot area required per living unit or guest room shall be five hundred (500) square feet. ~~F.L.A. Hotel Commission has min. of 500 sq. ft.~~
3. Any building erected in this Zone which exceeds two (2) stories in height shall be of fire resistive construction as specified in the Building Code.
4. Cabanas and other accessory buildings shall comply with the Building Code.

OTHER REQUIREMENTS:

Provisions shall be made for a parking area off the highway right-of-way, as provided elsewhere in these regulations.

SECTION 10

ZONE BU-1 - NEIGHBORHOOD RETAIL BUSINESS DISTRICT:

No land, body of water and/or no structure shall be used or permitted to be used, and no structure shall be hereafter erected, constructed, moved, reconstructed or structurally altered or maintained in any Zone of Classification BU-1, which is designed, arranged or intended to be used or occupied for any purpose, excepting for one (1) or more of the following uses, unless otherwise provided.

USES:

1. Every use permitted in the preceding RU Zones, and unless otherwise specified, all of the following commercial uses shall be limited to retail business:

2. ^{RAWLING ALLEYS & SKATING RINKS SEE PROHIBITED USES}
Antique Shops, Appliance Shops, Aquariums, Art Goods and Bric-a-brac Shops, Artists' Studios, Auditoriums, Automobile Storage, Sale or Hire, Automobile Tires (New) Retail Only, Automobile Washing, Bait & Tackle Shops, Bakery Stores, Retail Only (Baking permitted on premises), Banks, Barber Shops, Bath and Massage Parlors, Beauty Parlors, Bicycle Sales & Repairs, Billiard Rooms and Pool Rooms (Sound-proofed and Air-Conditioned), Boats (Carrying passengers - Rental-Hire-Sale-Docks, No Repairs), Cigar Stores, Commercial Boat Piers or Slips for docking purposes only - Yacht or Boat Storage for laying up, but not for repairs, Conservatories, Contractors' Offices, Curio Shops, Dancing Halls and Academies (Sound-proofed and Air-Conditioned), Drug & Sundry Stores, Employment Agencies, Filling & Gasoline Service Stations (see Restrictions Below), Florist Shops & Landscape Offices, Fruit Stores - Retail (Packing on the premises), Funeral Homes & Mortuaries (no cremation), Furniture Stores, Garage (Community), Grocery Stores, Haberdashery, Hardware Stores, Hat Cleaning and Blocking, Interior Decorating - Costuming - Draperies, Jewelry Stores, Laundries - hand- and self-service, provided that a laundry in this area shall provide a sanitary and safe disposal of waste water and operate without producing smoke, Lawnmowers - Rental, Sales and Service - Leather Goods Stores, Luggage Shops, Mail Order Offices, Meat Markets - no live poultry - Messenger Offices, Millinery Stores, Modistes - Wearing Apparel Stores, Furriers, Music, Radio & Television Shops & Repairs, Newsstands, Notions, Office Buildings, Optical Stores, Paint and Wallpaper Stores, Parking Lots (Commercial), Photograph Galleries, Post Offices, Pottery Sales (no manufacturing), Professional Offices, Pressing Clubs, Cleaning and Laundry Agencies, provided no gasoline or explosives of any kind are stored or used, Shoe Repairing Shops, Shoe Stores, Show Rooms (Display & Sales), Soft Drink Stands, Souvenir Stores, Sporting Goods Stores, Stationery & Book Stores, Tailor Shops, Theatres (no Drive-Ins), Telephone & Telegraph Stations & Exchanges, Tea Rooms, Restaurants, Cafeterias (no entertainment), Waiting Rooms & Ticket Offices for Common Carriers, Confectionary Stores & Ice Cream Stores, Private Clubs, Lodges, Fraternities, Sororities, Package Stores, Shopping Centers PAGE 28

3. Material storage yards in connection with retail sales of products where storage is incidental to the approved occupancy of a store use on the premises or where the storage is incidental to the approved occupancy of a contractor's office permitted on the premises; provided all products and materials used or stored are enclosed by a masonry wall or louvered fence, not less than six feet (6") in height (painted and maintained in approved manner) or within a masonry building. Storage of all materials shall not exceed the height of the wall; storage of cars, trucks and equipment used in connection with the permitted trade or business may be permitted within the walls.

4. Propagating and growing plants, shrubbery and trees from an open lot, provided the area so used is set back at least twenty-five feet (25') from all official rights-of-way, except that individual samples for display purposes only may be located not closer than the required building line. Fertilizer, compost, etc., shall be limited to quantities for immediate use, and kept at least one hundred feet (100') from residential buildings in RU and EU Zones.

SPECIAL ADDITIONAL USES:

1. Where the second story of a commercial building is to be used for

COPY

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF Lee)

BEFORE ME, the undersigned authority, on this 29th day of October, 2019 personally appeared YVONNE LUCAS, who is personally known to me or who produced Florida Driver License as identification, who did take an oath, and who deposes and says as follows:

1. Affiant is providing this affidavit regarding the property located at 1661 Estero Boulevard, Fort Myers Beach, Florida, ("Key Estero Property") currently owned and operated by Key Estero Shops, LLC.
 2. Affiant was an officer (Secretary) of Beate Rotermund, Inc., previously known as Key Estero Ltd., former owner of the Key Estero Property.
 3. Key Estero Ltd. purchased the Key Estero Property in 1980, and at that time, the standard practice of renting surplus parking spaces had been well established. Key Estero Ltd. continued this daily practice without interruption by renting spaces on weekends, holidays and for special events. There was never a nine (9) month interruption of this parking space rental practice from 1980 through 2001.
 4. Affiant has personal knowledge that the management companies of Key Estero Shops (along with occasional outside companies) monitored the number of parking spaces available for rent to make sure the tenants had the requisite amount of parking for their businesses.
 5. Affiant was the selling real estate agent in 2017 when the Key Estero Property was sold to its current owner, Key Estero Shops, LLC.
- FURTHER AFFIANT SAYETH NAUGHT.

Yvonne M. Lucas
YVONNE LUCAS, Affiant

The foregoing instrument was acknowledged before me this 29th day of October, 2019, by Yvonne Lucas. She is personally known to me or has produced Florida Drivers License as identification.

(Notary Stamp)

Laurie L. Plue
Notary Public
Print Name: LAURIE L. PLUE





Town of Fort Myers Beach

USE PERMIT APPLICATION

Florida Building Codes, 6th Edition

To apply for a Use Permit, submit this application and all required documents by email to permits@fmbgov.com or submit in person at 2525 Estero Blvd. Fort Myers Beach, FL 33931.

Signs: If you will be altering or erecting a sign you must apply for a sign permit, this includes tenant panel changes, even if a USE permit is not required.

Business Name: Key Estero Shops, LLC
 Business Location Address: 1661 Estero Boulevard, Fort Myers Beach Unit # _____
 Contact Person: Steven C. Hartsell, Attorney for owner Phone # 239-336-6244
 Email Address: stevehartsell@paveselaw.com

All communication from the Town of Fort Myers Beach regarding your application will be sent to the email address listed.

Provide a brief description and an explanation of the intent of your business, including hours of operation:

Daily paid parking from 8:00AM to 9:00PM.

Check which of the following you are applying for, provide the items requested along with your application.

- ☐ New Occupancy \$100.00, submit a site plan, existing and proposed floor plans. (See submittal requirements)
☐ Tenant Change \$100.00/ \$35.00*, submit a site plan, existing and proposed floor plan. (See submittal requirements)
 Provide the name of the prior tenant: _____
 *If there has been no building inspections in the last 2 years, the fee will be \$100.00
☐ Shared Space - Office \$35.00, provide name of current business name: _____
☐ Shared Space- Other \$100.00, submit a site plan, existing and proposed floor plan. (See submittal requirements)
 Provide the name of the current business: _____
☐ Charter Boat \$35.00, Name of Marina: _____ # Of Passengers: _____
 Provide permission letter from the Marina.

SITE USE (FLOOR AREA, SEATING & PARKING):

Total Square Footage of Space: _____ Total Parking Spaces: 135
 Parking Spaces assigned by Lease: _____ Number of Seats (Restaurants only): _____
 Outdoor Seats (Restaurants only): _____

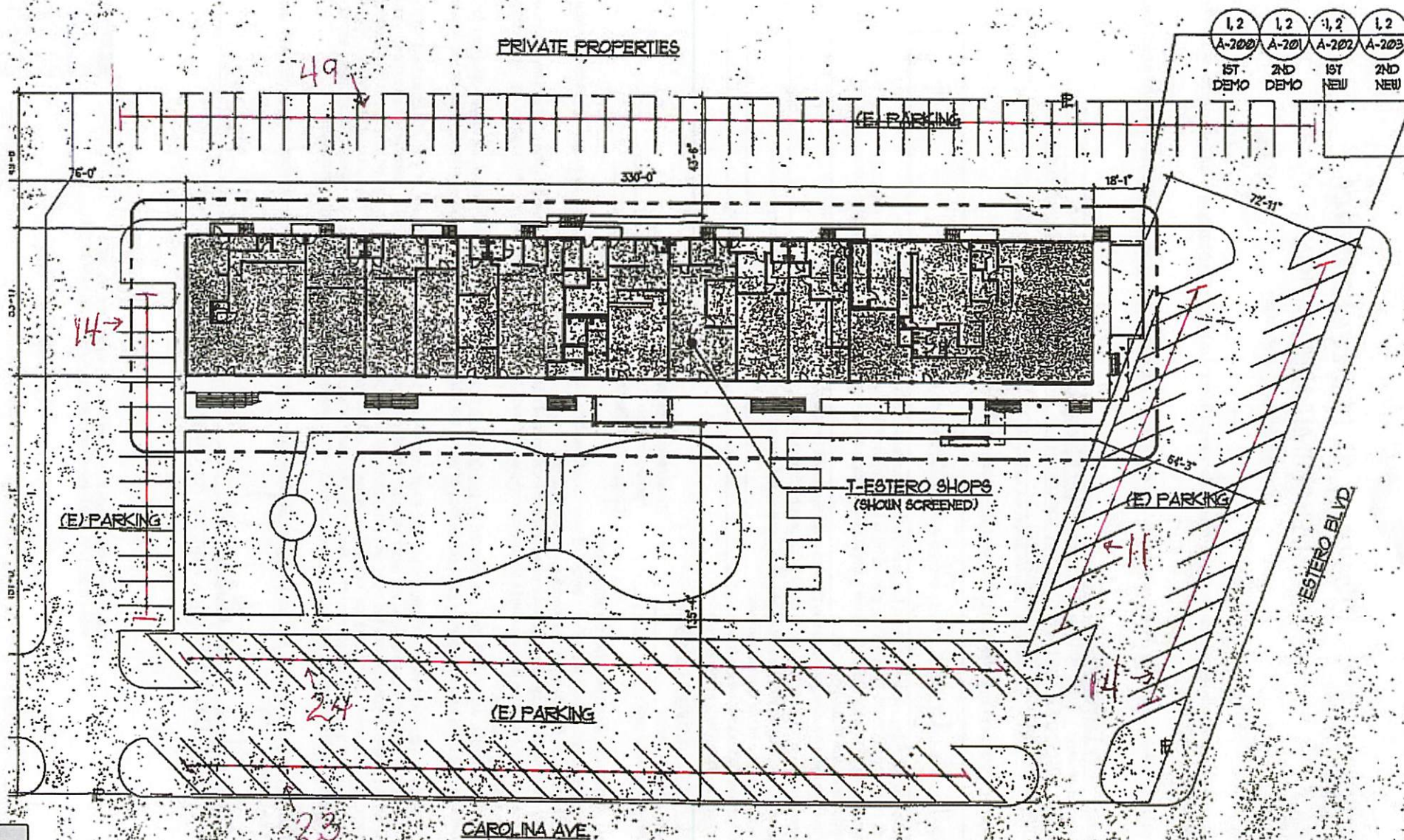
ADDITIONAL INFORMATION/ SUBMITTAL REQUIREMENTS

- Floor Plan should include the existing layout of your space. Indicate the size of the space, including existing walls, partitions, counters, electrical layout, plumbing fixtures, doorways, restrooms, etc.
- A site plan should include location of the structure, unit location, and a parking diagram indicating the location of all parking spaces on the property. If your location is in a multiple occupancy complex, please indicate on the parking diagram which spaces are allocated to your unit including handicap.
- Garbage collection verification. You are required by Lee County Ordinance #95-19 to make provisions for garbage collection for your business. This could be a copy of your garbage bill, copy of your lease which states landlord will provide garbage collection services, etc.

THIS PERMIT IS VOID IF THE FIRST INSPECTION IS NOT MADE WITHIN THE SIX (6) MONTHS FROM THE ISSUED DATE 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.

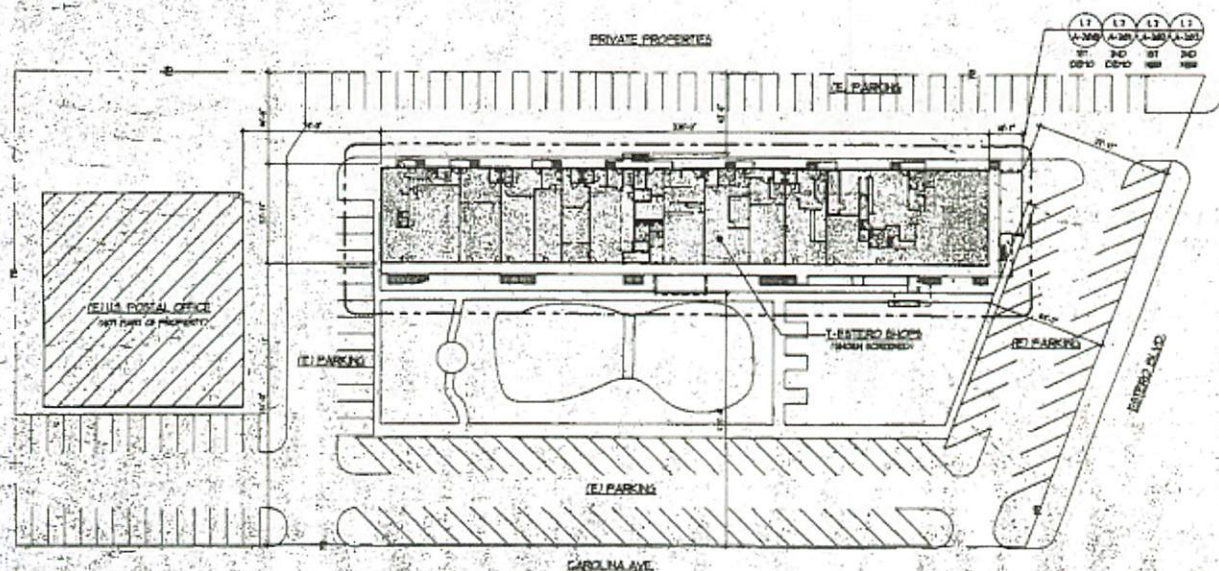
I hereby certify that to the best of my knowledge, the information submitted for this permit is true, correct and complies with Deed of Restrictions
Steven C. Hartsell
 Signature Steven C. Hartsell, Esquire, Attorney for Owner
11-13-2019
 Date

Ex. 6



$$49 + 14 + 11 + 14 + 24 + 23 = 135 \text{ spaces}$$

1661 ESTERO BOULEVARD
FORT MYERS, FL 33931



GENERAL NOTES

GENERAL CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS APPLICABLE TO THIS PROJECT PRIOR TO THE COMMENCEMENT OF ANY WORK. REFER TO SHEET C-100 FOR ADDITIONAL REQUIREMENTS.

GENERAL CONTRACTOR SHALL VERIFY THE LOCATION OF ALL EXISTING UTILITIES AND RECORD THE LOCATION OF ALL UTILITIES ON OR BEFORE COMMENCEMENT OF ANY WORK. REFER TO SHEET C-100 FOR ADDITIONAL REQUIREMENTS.

④ SITE PLAN

SEALING

 $\sigma = 10^{-4}$ 

PROJECT DESCRIPTION

SUBSIS INFO	
FIRE CONTROL	
WEAPON CONSTRUCTION TYPE	
WEAPON CAPABILITY	
FOREST ACCESS	541 OVERD BLACK FOREST AREA 5, 5000
LEGAL DESCRIPTION	CELL 30 BIRD 5 PMS 54 FT LK

FLOOR AREA & BUILDING HEIGHT

LOT AREA (SQUARE FEET) 3,400 SQ. FT.
FLOOR AREA (SQUARE FEET) 3,400 SQ. FT.
FOOTPRINT FLOOR AREA (SQUARE FEET) 3,400 SQ. FT.

SHEET INDEX

ASSEMBLY

0-000 SITE PLAN, BASE MODEL, VERIFY MAP, LEGEND, MAP
PROJECT DESCRIPTION

A-000 INTRODUCTION, ACRONYMS, ABBREVIATIONS

A-100 FIRST FLOOR GENERAL PLAN

A-200 SECOND FLOOR GENERAL PLAN

A-300 THIRD FLOOR

A-400 FOURTH FLOOR

A-500 ROOF PLAN

A-600 ENTRANCE ELEVATIONS

A-700 EXTERIOR ELEVATIONS

A-800 INTERIOR ELEVATIONS

A-900 PLUMBING, MECHANICAL, ELECTRICAL

A-1000 INTERIOR REFLECTING CEILING PLAN

A-1100 INTERIOR ELEVATIONS

A-1200 EXTERIOR ELEVATIONS

1-0 ACCESSIBLE PERIMETER DETAILS

1-1 ACCESSIBLE ENTRANCE DETAILS

1-2 ACCESSIBLE EXTERIOR DETAILS

QUESTIONS

Line Items, Totals and Totals

APPLICABLE CODES

UNIT OF 2014 BLOWING BUILDING CODE APPLICATIONS AS OF JUNE 30, 2014

FLORIDA BUILDING CODE 5TH EDITION (FBC) BUILDING
FLORIDA BUILDING CODE 5TH EDITION (FBC) ACCESSIBILITY
FLORIDA BUILDING CODE 5TH EDITION (FBC) ENERGY CONSERVATION
FLORIDA BUILDING CODE 5TH EDITION (FBC) DISTINGUISHED BUILDINGS
FLORIDA BUILDING CODE 5TH EDITION (FBC) MECHANICAL
FLORIDA BUILDING CODE 5TH EDITION (FBC) PLUMBING
NATIONAL ELECTRIC CODE 9TH EDITION
FLORIDA FIRE PREVENTION CODE 5TH EDITION (FPC)

CONSULTANTS

ARCHITECT
GREGG E. CORLI, AIA
ACCA SCARFORD
ARCHITECTS + PLANNERS
SUITE 1000, 1000 TERRACE
EAST CORAL, FL 33401
TEL.: (407) 866-7400

VICINITY MAP



Reviewed by: EAS

ARCHITECTS - PLANNERS

ACS A

PROJECT NO. _____ SHEET TITLE _____
 DATE _____ DRAWN BY _____
 CHECKED BY _____
 SCALE _____
 PROJECT DESCRIPTION _____
 VICINITY MAP _____
 SITE PLAN SHEET INDEX _____

PROJECT
KEY ESTERO SHOPS LLC
1661 ESTERO BLVD
FT MYERS BEACH,
FLORIDA 33931

1 OF 15

PERSONNEL		SERVICES			PLAN COSTS	
NO.	DATE	PT.	NO.	DATE	PT.	PLAN COSTS
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EXCERPT OF MEETING OF
TOWN OF FORT MYERS BEACH
SPECIAL MAGISTRATE HEARING

JANUARY 30, 2020

AGENDA ITEM 18

CASE NO. CE-190026

ORIGINAL

APPEARANCES:

SPECIAL MAGISTRATE MYRNABELLE ROCHE

JOHN R. HERIN, JR., ESQUIRE

ELI LEE, CODE ENFORCEMENT OFFICER

Transcription Service: Merit Court Reporting
6213 Presidential Court
Suite 100
Fort Myers, FL 33919
(239) 481-1300

Proceedings recorded by digital video recording;
transcript produced by transcription service.

MR. HERIN: Next item on the agenda is agenda item number 18, Case Number CE-190026. The presenting officer is going to be Eli Lee.

Officer Lee, are you familiar with Case CE-190026 that we're here for this morning?

MR. ELI: Yes, that's correct.

MR. HERIN: Can you please tell the special magistrate the location of the property in question?

MR. ELI: It is -- I'm sorry -- it's 1661 Estero Boulevard, Key Estero Shops.

MR. HERIN: What is the nature of the violation?

MR. ELI: Operating a parking lot without a use permit.

MR. HERIN: Okay. Have you -- please describe to the special magistrate how you are familiar with this property and the operation of the illegal parking lot.

MR. ELI: Yes. So this case was brought to me (indiscernible) the previous Code Enforcement officers. The parking lot is operating without a use permit.

Per the town ordinance, you have to have a use

1 permit to operate a parking lot.

2 So the original notice of violation was sent
3 out January 31st of 2019. We have the original,
4 you know, postings, of course, the green card, the
5 return. I do have the original notice, 8/15/2019,
6 that was sent out as well, you know, the hearing
7 date, the posting of it, you know, the certified,
8 you know, the return.

9 I do have the amended as well for today's
10 hearing with the postage and the green card and so
11 forth and so on.

12 And as you get to the back of the packet, the
13 first photo that you see is a picture that the
14 previous Code Enforcement officer, Joe Kaye
15 (phonetic), took a picture of with the parking lot
16 operating without a use permit.

17 They have helpers, you can say, that charge a
18 fee for like 10 to \$15. It kind of varies
19 different days for people to park there. And all
20 this without a use permit.

21 And as you kind of -- you can see in the
22 (indiscernible) as you navigate through the
23 pictures, fast forward to like the October, I took
24 a picture of the parking lot. Of course, it is
25 still, you know, operating without a use permit.

1 And I believe October as well is when we have
2 Roar Offshore. I took a picture of that. And
3 that's when they were still operating without a use
4 permit.

5 Of course, fast forward to January. They're
6 still operating without a use permit, you can see
7 in the pictures. They're not time stamped on the
8 pictures, but if you look at the PowerPoint, you
9 see the days, what I took a picture of and -- as a
10 result.

11 And as of today, they still don't have a use
12 permit for the parking lot.

13 SPECIAL MAGISTRATE ROCHE: They're basically
14 using it as a charge by park instead of using it
15 for the intended purpose, which was the businesses
16 there?

17 MR. ELI: Correct.

18 MR. HERIN: And Special Magistrate, this
19 property is a retail office complex. It was
20 permitted as such by Lee County prior to the town's
21 incorporation.

22 The evidence is that it is being operated as a
23 commercial parking lot and in addition to its
24 regular, what it's there for, which is to provide
25 spaces for the retail establishments. And under

1 our code, that requires a special exception and the
2 applicant or the property owner has not submitted
3 such an application, has not obtained such
4 approvals and, therefore, is in violation of the
5 town code.

6 SPECIAL MAGISTRATE ROCHE: It looks like it is
7 available for them --

8 MR. HERIN: Subject to going through the
9 process, it can be allowed, but it's never been
10 permitted as such. And as a result, until
11 appropriate approvals are required, which would
12 also require the site to be improved, brought up to
13 code, it is in violation of our regulations.

14 SPECIAL MAGISTRATE ROCHE: All right. Do you
15 have somebody here on behalf of the property owner?

16 Come on up. State your name and relationship
17 to the case, please.

18 Were you sworn in?

19 MR. NACCARATO: Pardon?

20 SPECIAL MAGISTRATE ROCHE: Were you sworn in?

21 MR. NACCARATO: (Indiscernible).

22 SPECIAL MAGISTRATE ROCHE: Do you -- do you
23 affirm that the testimony you're about to provide
24 is the truth and nothing but the truth?

25 MR. NACCARATO: Yeah.

1 I'm Carmen Naccarato. I purchase that
2 property. That was February the -- on March the
3 2nd of 2017. I'm a businessman. I've been in
4 business for 48 years. I'm in Michigan.
5 (Indiscernible) in Florida.

6 And so (indiscernible).

7 MR. HERIN: Sir, can you please speak into the
8 microphone?

9 SPECIAL MAGISTRATE ROCHE: You've got to try
10 to speak into the mike. Yeah, there you go.

11 MR. NACCARATO: That was in 2002. And at the
12 time, the property was managed by Tropical
13 (indiscernible) which she was part of -- he or she
14 owned 80 percent of the property. So I kind of
15 fell in love with the property in 2002.

16 And now her name and -- her name was -- and is
17 still -- I'm still in touch with her. Okay. His
18 name Yovan Lucas (phonetic), Lady Lucas, okay.

19 So I bought property through them, this and
20 that, which I own, you know, still own in Fort
21 Myers Beach way over here. And I ask, I say, you
22 know, because of the way it was built, you know
23 what I'm saying, it's just built like a bunker.

24 And I -- you know, on two and a half acres of
25 land. And I told Yovan, I says, so listen, just in

1 case, she -- I ask her, I say, who own this
2 building. She says it's a lady from Germany. And
3 she said I own 80 percent and I'm managing the
4 property for her.

5 Okay. So I told her, I said, just in case,
6 whenever she decide to sell it, call. That's what
7 she did (inaudible).

8 Her son inherited the property. So he listed
9 the property with some brokerage firm in Naples.
10 And she said that's listed with (inaudible) the
11 property.

12 Okay. So the property was built in two
13 thousand -- in 1976. In the county records, it
14 shows it right there, commercial lot allowed to do
15 beach parking as, you know, for a fee.

16 Okay. So when I bought the property, you
17 know, that's when I found that out (indiscernible)
18 the (indiscernible) this and that.

19 So the town incorporated in 1995. They have
20 never had any problems, ever.

21 All the sudden, you know what I'm saying, they
22 started, you know, with the violation for operating
23 a, you know, a parking lot without a permit.

24 So what I did, I came over here the second day
25 that they post the violation. So I went to talk to

1 Jason Green (phonetic). She says, Carmen, don't
2 worry about it. We haven't got no ordinances in
3 places. We don't know how to go about. Whenever
4 we get -- we have a -- everything is straightened
5 out over here, how we're going to go about it, I'll
6 give you a call. I never heard from her.

7 I've been harassed. I've been threatened.
8 This has been a disaster for me. I bought the
9 property. Like I said, I closed on February --
10 March the 2nd.

11 I applied for permit -- because there used to
12 be two entrance to the property, I applied for a
13 permit at the town over here immediately to close
14 the one entrance by the -- by the hardware store
15 there. Okay. Go through the alley there and this
16 and that.

17 So when I came to apply for permit, they ask
18 me, why you want to -- why you want to close that
19 entrance. I said, listen, we cannot control the
20 parking lot. I said, it's too dangerous. People,
21 they go to the (indiscernible). I says, they drive
22 40, 50 mile an hour. I says, I need a permit. I
23 got to close that entrance.

24 After a couple of months, they issued the
25 permit, okay.

1 So, anyway, March the -- March the 24th, this
2 lady, okay, came up.

3 Another thing, too, I got an okay from the
4 fire marshal, fire chief and from the police
5 department if I could close on daily basis with
6 cones and ribbon across that one particular
7 entrance that I closed.

8 I was sitting there. It was around 1:30.
9 This lady, she pull up to me. She pull up right to
10 the cones. She says, what are you doing over here?
11 I told her the situation. She don't want to
12 listen.

13 She said, literally, you got to remove those
14 cones or I'm going to run over. I -- I stood up.
15 I says, what, you're going to run over the cones,
16 run me over, too, I said, you know.

17 She said, I'm going to call the cops.
18 Immediately, there were five or six cars. This was
19 -- it was a setup. They told me to remove the
20 cones. I told them, I said here are the phone
21 numbers from the fire department, from the police
22 department. I says, I'm allowed to do this.

23 SPECIAL MAGISTRATE ROCHE: Well, you're not
24 here about the cones.

25 MR. NACCARATO: Pardon?

1 SPECIAL MAGISTRATE ROCHE: You're not here
2 about the cones. That's -- the reason --

3 MR. NACCARATO: No, no.

4 SPECIAL MAGISTRATE ROCHE: Okay.

5 MR. NACCARATO: I'm telling you what's going
6 on with this property now. You know what I'm
7 saying.

8 So, anyways, I refuse to remove the cones. So
9 what did they did? They throw them in the ground.
10 They arrested me like a --

11 SPECIAL MAGISTRATE ROCHE: Sir, we've got to
12 talk about the parking lot.

13 MR. NACCARATO: Okay.

14 SPECIAL MAGISTRATE ROCHE: We still have other
15 people in the audience that want to keep going with
16 their lives.

17 Let's go ahead and focus on -- I gave you a
18 lot of leeway.

19 MR. NACCARATO: Yeah, okay.

20 SPECIAL MAGISTRATE ROCHE: Let's focus on the
21 violation.

22 MR. NACCARATO: Like I said, there is -- there
23 is -- there is -- I don't know what is it with this
24 town over here that's -- if you read the -- when
25 the building was -- I'll go -- what the -- at the

1 -- the -- there is, there in the county records --
2 I don't know what -- their ordinance. The
3 structure has been there for 43, 44 years.

4 There can -- we cannot change. They cannot
5 (indiscernible) new ordinance. That, period.

6 We're going to have -- we're going to have to --

7 SPECIAL MAGISTRATE ROCHE: Do you have -- do
8 you have evidence, in the county records, that that
9 property was authorized to go ahead and have --

10 MR. NACCARATO: Yes, ma'am.

11 SPECIAL MAGISTRATE ROCHE: -- beach parking?

12 MR. NACCARATO: It's in black and white.

13 SPECIAL MAGISTRATE ROCHE: Okay. So what I'm
14 going to do is I'm going to go ahead and --

15 MR. NACCARATO: He was --

16 SPECIAL MAGISTRATE ROCHE: Do you have that
17 document with you?

18 MR. NACCARATO: We had -- we had a hearing.

19 SPECIAL MAGISTRATE ROCHE: Sir, do you have
20 that documentation with you?

21 MR. NACCARATO: I got it in my truck.

22 SPECIAL MAGISTRATE ROCHE: Okay. You got it
23 in your truck? Okay. So let's go ahead --

24 MR. NACCARATO: He has a copy. He has a copy.

25 MR. HERIN: Madam Special Magistrate, what the

1 property owner is alluding to is that --

2 MR. NACCARATO: I'll go get it. You're right.
3 I'll go get it.

4 SPECIAL MAGISTRATE ROCHE: Let him go ahead,
5 if he has it. Hold on.

6 MR. HERIN: There was, through legal counsel,
7 the property owner challenged the determination or
8 interpretation of staff that he needed a special
9 exception permit.

10 He, through counsel, alleged that he had a
11 vested right to continue this operation because
12 it's always been done that way and we, prior to the
13 hearing, asked for his counsel to provide us with
14 any copies that may exist from Lee County, because
15 the assertion was that this was permitted by Lee
16 County, showing that this location has been
17 approved for specifically commercial parking use,
18 not the -- the retail establishment with associated
19 parking.

20 SPECIAL MAGISTRATE ROCHE: Uh-huh.
21 (Indiscernible).

22 MR. HERIN: But specifically listing
23 commercial parking activity. No evidence was
24 presented.

25 The town council ruled that he did not have a

1 vested right. So that's why we're here, because --

2 SPECIAL MAGISTRATE ROCHE: So he's saying that
3 he has some document with him.

4 MR. NACCARATO: Oh, they do. They do.

5 MR. HERIN: If it is --

6 SPECIAL MAGISTRATE ROCHE: Here's what I'm
7 going to do.

8 MR. HERIN: If it is the information that
9 he --

10 MR. NACCARATO: I got --

11 SPECIAL MAGISTRATE ROCHE: Hold --

12 MR. NACCARATO: Okay.

13 SPECIAL MAGISTRATE ROCHE: Here's what I'm
14 going to do. He says he has something in his truck
15 that proves otherwise.

16 MR. NACCARATO: I'm sorry. I left it -- I
17 walked over here. I left the truck at the plaza.

18 SPECIAL MAGISTRATE ROCHE: Okay. Now the
19 story is changing.

20 MR. NACCARATO: No. Like I said, they do have
21 a document that my counsel -- I give a copy of the
22 documents to all the -- the -- you know what I
23 mean --

24 SPECIAL MAGISTRATE ROCHE: Wouldn't that have
25 been a document important to bring with you today?

1 MR. NACCARATO: (Indiscernible) to him.

2 SPECIAL MAGISTRATE ROCHE: Wouldn't that have
3 been a document important for you to bring today?

4 MR. NACCARATO: I'm going to bring -- I'm
5 going to bring over here. I had -- I'm going to
6 bring it.

7 SPECIAL MAGISTRATE ROCHE: All right. So
8 here's what I'm going to do. I'm going to go ahead
9 and table your case. I'm going to keep hearing the
10 remainder of the cases. That should give you
11 enough time to go ahead --

12 MR. NACCARATO: I'll be back.

13 SPECIAL MAGISTRATE ROCHE: -- and get that
14 document. But I will tell you right now that if
15 you're not back with -- if you don't have that
16 document, we're going to go ahead and --

17 MR. NACCARATO: I'll be here in about --

18 SPECIAL MAGISTRATE ROCHE: -- proceed as if it
19 doesn't exist.

20 MR. NACCARATO: I'll be here in about -- in
21 about -- give me about 15 minutes.

22 SPECIAL MAGISTRATE ROCHE: We should have
23 plenty of time to go ahead and hear the rest of the
24 cases, okay? So we're going to table it.

25 (Item recessed and continued as follows.)

1 MR. HERIN: I believe that we can go back to
2 Case Number --

3 SPECIAL MAGISTRATE ROCHE: Oh, he's back?
4 Okay.

5 MR. HERIN: -- 18 CE-190026, Key Estero Shops.

6 SPECIAL MAGISTRATE ROCHE: Go ahead and show
7 him first and then bring it to me.

8 MR. HERIN: I've seen it.

9 SPECIAL MAGISTRATE ROCHE: You've seen it?

10 MR. HERIN: Yes.

11 SPECIAL MAGISTRATE ROCHE: Okay. That's fine.
12 Just --

13 MR. HERIN: I've seen it.

14 SPECIAL MAGISTRATE ROCHE: I just want to make
15 sure to give him the opportunity to go ahead and
16 review it. Okay.

17 I have reviewed the documents represented by
18 the respondent which included a series of documents
19 from the Lee County official records.

20 MR. NACCARATO: (Indiscernible) there, yes,
21 ma'am.

22 SPECIAL MAGISTRATE ROCHE: Yes. I'm seeing
23 them, the site plan and (indiscernible) the
24 original site plans.

25 However, none of these documents actually

1 include any reference or was part of the deed --

2 MR. NACCARATO: Everything is there.

3 SPECIAL MAGISTRATE ROCHE: -- documents
4 actually say that you can go ahead and use it as
5 beach parking. Everything that I'm seeing is two
6 affidavits regarding the counting of spaces to see
7 how many can be rented versus what was being
8 occupied by the tenants, none of which --

9 MR. HERIN: And those aren't -- those aren't
10 official records of Lee County.

11 SPECIAL MAGISTRATE ROCHE: Correct.

12 MR. HERIN: Those are -- that's --

13 SPECIAL MAGISTRATE ROCHE: None of which are
14 -- I agree.

15 MR. HERIN: None of the site plans that --
16 official documents that are contained in that
17 material anywhere state that, for this particular
18 property, that it's been approve for commercial
19 parking use.

20 MR. NACCARATO: It says it right there in --

21 MR. HERIN: No, it does not.

22 SPECIAL MAGISTRATE ROCHE: Sir, what actually
23 says that is the -- the interpretation of the
24 Palicy (phonetic) law firm, which is not legally
25 binding against -- against the town and has no

1 effect whatsoever on ordinances or public records.

2 MR. NACCARATO: That is a public record right
3 there from the county.

4 SPECIAL MAGISTRATE ROCHE: And I understand.
5 And I saw them. I reviewed them. There is nothing
6 in here that actually allows --

7 MR. NACCARATO: It says -- it says a
8 commercial lot.

9 SPECIAL MAGISTRATE ROCHE: It's a commercial
10 building.

11 MR. NACCARATO: Commercial lot.

12 SPECIAL MAGISTRATE ROCHE: It's a commercial
13 lot for purposes of -- it's a commercial building.
14 So your tenants need to be able to park there.

15 MR. NACCARATO: Commercial building with
16 commercial lot --

17 SPECIAL MAGISTRATE ROCHE: That doesn't mean
18 you can go ahead and rent out the remaining spaces
19 to patrons outside without having the proper
20 authority from the town to do it.

21 MR. NACCARATO: The building -- I bought the
22 building --

23 SPECIAL MAGISTRATE ROCHE: Sir, I've heard
24 your story.

25 MR. NACCARATO: -- so that I could do -- that

1 I could do beach parking.

2 SPECIAL MAGISTRATE ROCHE: I gave you
3 leeway --

4 MR. NACCARATO: The building -- the
5 building --

6 SPECIAL MAGISTRATE ROCHE: -- to produce
7 documents.

8 MR. NACCARATO: -- it's --

9 SPECIAL MAGISTRATE ROCHE: The documents you
10 produced do not provide for any -- sir, I'm about
11 to rule.

12 MR. NACCARATO: Okay. Okay.

13 SPECIAL MAGISTRATE ROCHE: I hereby find that
14 the violation as stated in the notice of violation
15 did exist and continues to exist. I'm allowing the
16 property owner 30 days to go ahead and obtain the
17 required permit.

18 MR. NACCARATO: Okay.

19 SPECIAL MAGISTRATE ROCHE: Otherwise face a
20 fine of \$200 a day until the property is brought
21 into compliance.

22 MR. NACCARATO: (Indiscernible).

23 SPECIAL MAGISTRATE ROCHE: Sir.

24 MR. NACCARATO: (Indiscernible).

25 SPECIAL MAGISTRATE ROCHE: I'm also assessing

1 \$75 in fees and cost as incurred by the town in
2 bringing this matter before the magistrate.

3 MR. HERIN: Thank you, Special Magistrate.

4 MR. NACCARATO: Thank you.

5 (Item concluded.)
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1 STATE OF FLORIDA

2 COUNTY OF COLLIER

3

4 I, Joyce B. Howell, do hereby certify that:

5 1. The foregoing pages numbered 1 through 19
6 contain a full, true and correct transcript of
7 proceedings in the above-entitled matter, transcribed
8 by me to the best of my knowledge and ability from a
9 digital video recording.

10 2. I am not counsel for, related to, or
11 employed by any of the parties in the above-entitled
12 cause.

13 3. I am not financially or otherwise
14 interested in the outcome of this case.

15 4. I am an approved transcriber for the
16 Twentieth Judicial Circuit Court.

17
18 SIGNED AND CERTIFIED:

19

20

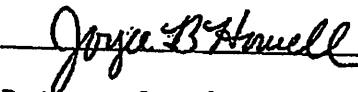
21

22

23

24

25


Date: October 15, 2020



Town of Fort Myers Beach

Exhibit G

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

1/31/2019

KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381

CASE NUMBER:	CE19-0026
CERTIFIED MAIL:	7018 2290 0001 4413 8365

SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **1/31/2019** by Town of Fort Myers Beach Code Enforcement Officer **JOE KONTOMANOLIS** indicates that the following items are a violation:

Operating Parking Lot w/out a USE Permit

These items are a violation of the following Town Codes:

LDC Sec. 34-3203. - Illegal buildings, uses and lots.

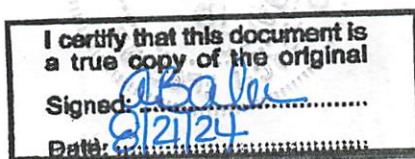
If a building, use, or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses or lots.

(1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c) of this chapter.

(2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations.

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:
Obtain a permit and pass all subsequent 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) 765-0202 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

JOE KONTOMANOLIS

Code Enforcement Officer

Town of Fort Myers Beach

Received By: _____ Date: _____

PARCEL #: 19-46-24-W4-00402.0010
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. CE19-0026

KEY ESTERO SHOPS, LLC,

Respondent.

AMENDED 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, Key Estero Shops, LLC appearing by and through its designated representative Carmen Naccarato. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Key Estero Shops, LLC ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 1661 Estero Blvd., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

A tract or parcel of land lying in Lot 11, T.P. HILL'S SUBDIVISION, as recorded in Plat Book 3 at Page 84, of the Public Records of Lee County, Florida, described as follows:

Begin at a concrete monument marking the Southeast corner of said Lot 11; thence run N 68°52'30"W. along the Northerly R/W of Estero Boulevard, a distance of 274.39' to

Page 1 of 4

the Easterly R/W of Carolina Ave.; thence run N 1°00'E along said Easterly R/W, a distance of 652.21'; thence run S 89°16'E., a distance of 254.16' to the Easterly line of said Lot 11, thence run S 0°44'W., a distance of 747.81' to the Point of Beginning.

LESS AND EXCEPT the North 275 feet as described in Official Record Book 1781 at Page 3018.

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 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:

ILLEGAL PARKING LOT

B. CONCLUSION OF LAW:

1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 34-3203, Illegal buildings, Uses and Lots.
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:

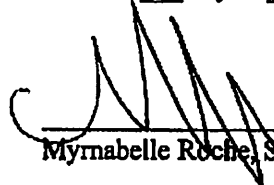
1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$75.00 in administrative costs and fees.
3. Respondent is ordered to correct the violation by:

OBTAINING A USE PERMIT

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 **\$200.00 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 2 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.

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.

THIS PORTION INTENTIONALLY LEFT BLANK

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 9 day of September, 2020 to:

Key Estero Shops, LLC
3220 Pine Cone Ct.
Milford, MI 48381

Lora Naccarato, Registered Agent for:
Key Estero Shops, LLC
3220 Pine Cone Ct.
Milford, MI 48381

Wt Sell
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: Wt Sell
Dated 9/9/2020

PARCEL #: 19-46-24-W4-00402.0010
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. CE19-0026

KEY ESTERO SHOPS, LLC,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on August 20, 2020, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Key Estero Shops, LLC appearing by and through its designated representative, Robert Burandt, Esq. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Key Estero Shops, LLC ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 1661 Estero Blvd., Fort Myers Beach, FL 33931 ("Property"), legally described as:

A tract or parcel of land lying in Lot 11, T.P. HILL'S SUBDIVISION, as recorded in Plat Book 3 at Page 84, of the Public Records of Lee County, Florida, described as follows:

Begin at a concrete monument marking the Southeast corner of said Lot 11; thence run N 68°52'30"W. along the Northerly R/W of Estero Boulevard, a distance of 274.39' to the Easterly R/W of Carolina Ave.; thence run N 1°00'E along said Easterly R/W, a distance

of 652.21'; thence run S 89°16'E., a distance of 254.16' to the Easterly line of said Lot 11, thence run S 0°44'W., a distance of 747.81' to the Point of Beginning.

LESS AND EXCEPT the North 275 feet as described in Official Record Book 1781 at Page 3018.

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 34-3203 of the Town Code.
5. The Respondent has not complied with the Order of Enforcement, not paid the accrued fine in the amount of \$34,400.00, which began to accrue on March 1, 2020 and continues to accrue in the amount of \$200.00 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 August 20, 2020.

B. CONCLUSION OF LAW:

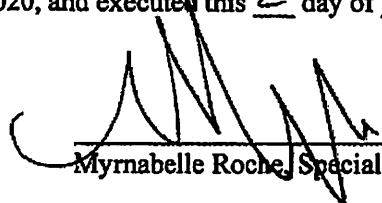
1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$34,475.00, has accrued as of the date of this hearing and continues to accrue in the amount of \$200.00 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 20th day of August, 2020, and executed this 2 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

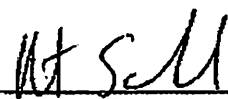
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 9 day of September, 2020 to:

Key Estero Shops, LLC
3220 Pine Cone Ct.
Milford, MI 48381

Lora Naccarato, Registered Agent for:
Key Estero Shops, LLC
3220 Pine Cone Ct.
Milford, MI 48381

Robert R. Burandt, Esq.
Burandt, Adamski, Feichthaler, & Sanchez, PLLC
1714 Cape Coral Parkway East
Cape Coral, Florida 33904


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: Wt Sell
Dated 9/9/2020

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA** **CIVIL ACTION**

KEY ESTERO SHOPS, LLC,

Appellant/Respondent,

vs.

Case No. 20-CA-6312

TOWN OF FORT MYERS BEACH, FLORIDA,

Appellee/Petitioner.

ORDER GRANTING MOTION TO DISMISS APPEAL WITH PREJUDICE

THIS CAUSE comes before the Court on Appellee's "Motion to Dismiss Appeal with Prejudice," filed on February 10, 2021. Appellant's complaint was filed on September 17, 2020, and an initial brief and appendix was filed on November 24, 2020. In its complaint, Appellant seeks judicial review of a decision of the Code Enforcement Board, which is governed by Fla. R. App. P. 9.190(b)(3), 9.110(c), and Fla. Stat section 162.11. Having reviewed the motion and the record, the Court finds the following:

1. The underlying facts of this code enforcement appeal are generally summarized as follows. Appellant is the owner of subject property located in Fort Myers Beach that it claims was originally zoned, prior to 1976, in a district that allowed commercial businesses and a large parking lot to be located and operated on the property. Appellee, the Town of Fort Myers Beach, sent Appellant a Notice of Violation in 2019 that the subject property was operating a commercial parking lot without a use permit, in violation of local land use ordinances. The alleged violation was not cured within thirty days and a public hearing was held on January 30, 2020. Following the hearing, the Special Magistrate determined that an Order of Enforcement was warranted based on the "competent, substantial evidence" presented at the hearing and executed a written "Code Enforcement Order" on February 6, 2020. Appellant still did not comply and the alleged violation was not cured. A public hearing was held in September 2020 at which the Special Magistrate

entered an order imposing a lien on the property based on accrued fines. On the same day, an “Amended Code Enforcement Order” was executed; Appellee pleads that this amended order was entered to correct a scrivener’s error in the legal description of the subject property. This appeal was filed on September 17, 2020, challenging the amended order and the order imposing the lien.

2. In Appellee’s motion to dismiss this appeal with prejudice, Appellee argues that the case should be dismissed because it was untimely filed. Specifically, Appellee argues that the true order on appeal is not the two orders executed on September 17, 2020, but the original Code Enforcement Order executed on February 6, 2020. In support of this argument, Appellee points to the fact that Appellant’s appendix includes the transcript for the public hearing on January 30, 2020, not the subsequent hearing in September, and the Initial Brief raises claims attacking the decision made by the Special Magistrate following the hearing on January 30, 2020. Appellee further cites to Rivers v. State, Dept. of Revenue, 508 So.2d 360 (Fla. 2d DCA 1987); Hardin v. Monroe Cty., 64 So.3d 707 (Fla. 3rd DCA 2011); City of Palm Bay v. Palm Bay Greens, LLC, 969 So.2d 1187 (Fla. 5th DCA 2007); and City of Fort Lauderdale v. Bamman, 519 So.2d 37 (Fla. 4th DCA 1987).

3. Having reviewed the pleadings and appendix in this case and consulted applicable case law, the Court finds that the appeal was indeed untimely filed. The facts of this case are virtually identical to those in Bamman, 519 So.2d 37, in which a landowner failed to appeal the order finding a code enforcement violation on his property and instead appealed a supplemental order entered four months later. Id. The appellate court held that the landowner could not bring up for appellate review the final order by appealing the supplemental order, and therefore, the reviewing circuit court lacked any jurisdiction to review the final order when the case was on appeal for the supplemental order. Id. at 38. What the landowner should have done to challenge the order finding the code enforcement violation was appeal the final order within thirty days after it was originally rendered. See id.; see also Hardin, 64 So.3d 707 (timely appeal of subsequently entered supplemental order and claim of lien is valid as to those orders, but does not revive circuit

court's jurisdiction to review untimely appeal of order finding code enforcement violation).

4. The alleged errors of the Code Enforcement Board raised in Appellant's initial brief would have been made in relation to its order entered on February 6, 2020, following the January 30, 2020 hearing. The entrance of an amended order correcting a scrivener's error and an order imposing a lien did not grant Appellant a second opportunity to appeal the Board's decision made six months earlier.

Therefore, it is hereby

ORDERED AND ADJUDGED that Appellee's "Motion to Dismiss Appeal with Prejudice" is GRANTED and this case is hereby DISMISSED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida.



eSigned by Alane Laboda 04/27/2021 10:09:04 Cd6ihHCU

Electronic Service List

David William Holley <burandtlaw@capecoralattorney.com>, <David@capecoralattorney.com>, <Paralegal1@capecoralattorney.com>

John R Herin Jr <jherin@foxrothschild.com>, <jpoli@foxrothschild.com>, <jmiranda@foxrothschild.com>

Court Administration (24), <StaffAttorney-LEE@ca.cjis20.org>

EXHIBIT L



**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 Officer D. Batt, Code Enforcement Officer for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. I, D. Batt, am a person authorized by law to inspect violations of the Town of Fort Myers Beach Code contained herein and the statements set forth herein are based upon personal knowledge.
2. On the dates of 08/07/2024, 08/15/2024 and 08/17/2024 the violation of the Town of Fort Myers Beach Ordinance No. 34-3203 for Illegal buildings, uses and lots. If a

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | 2731 Oak Street, Fort Myers Beach, FL 33931



building, use, or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses or lots. </br>

(1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c) of this chapter. </br>

(2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations. are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and must be abated by repair and rehabilitation or by demolition in accordance with the provisions of the Unsafe Building Abatement Code (see article I of this chapter). “For the operation of a shared parking lot to the public for a fee per vehicle space without first obtaining the required Use Permit.” on the property located at 1661 Estero Blvd., Fort Myers Beach, FL 33931.



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

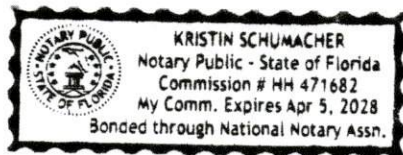
3. Photos were taken on the dates listed and attached to this affidavit as evidence
Showing the violation continues.

4. I have personal knowledge of all these facts and each is true to the best of my
knowledge and belief.

Signature of Affiant

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online
notarization, this 27th day of August, 2024 by D. BATT, as Code Officer, who is
personally known to me or has produced _____ as identification.



Signature of Notary

Kristin Schumacher
(Name typed, printed or stamped)

STAMP

My Commission expires: 4/5/28

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | 2731 Oak Street, Fort Myers Beach, FL 33931



*Aug 15, 2024 at 9:17:27 AM
Town of Fort Myers Beach*



Aug 17, 2024 at 8:45:37 AM
Town of Fort Myers Beach



EXHIBIT M



Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING
2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

08/26/2024

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

KEY ESTERO SHOPS LLC
3220 PINE CONE CT
MILFORD, MI 48381,
Respondent.

SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010

Case Number:	20240249
Certified Mail:	9589071052700636646877
Regular Mail:	

NOTICE OF CODE ENFORCEMENT HEARING

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 162, Florida Statutes and Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that (an) uncorrected violation(s) of one or more codes of the Town of Fort Myers Beach, as described in the **NOTICE OF VIOLATION / NOTICE OF HEARING**, previously provided to you (a copy of which is enclosed herewith), exists on the above-described property. A hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has, therefore, been scheduled for **at 09:00 AM on 09/05/2024** in the Council Chambers at Town Hall, located at 2731 Oak St., Fort Myers Beach, Florida.

A copy of the evidentiary case file and all materials provided by the Town to the Special Magistrate in relation to this hearing can be viewed and accessed in advance of the hearing at the link below:

<http://www.fortmyersbeachfl.gov/209/Meetings-Agendas>

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 any other action(s) that may affect your rights. If you believe you have come into compliance, it is your responsibility to contact the Code Enforcement Division so that an inspection can be performed to determine compliance.

D. Batt

Code Enforcement Officer
Town of Fort Myers Beach

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 NOTIFY THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202, AT LEAST 72 BUSINESS HOURS BEFORE THE HEARING DATE.

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 BY A COURT REPORTER UPON WHICH THE APPEAL IS TO BE BASED.



Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING
2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

08/26/2024

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

Lora Naccarato Registered Agent for
KEY ESTERO SHOPS LLC
3220 Pine Cone Ct
Milford, MI 48381,

Respondent.

Case Number:	20240249
Certified Mail:	9589071052700636646860
Regular Mail:	

SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010

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Town of Fort Myers Beach
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2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

08/26/2024

TOWN OF FORT MYERS BEACH,
Petitioner,

Case Number:	20240249
Certified Mail:	9589071052700636646853
Regular Mail:	

vs.

Key Estero Shops LLC Registered Agent for
KEY ESTERO SHOPS LLC
1661 Estero Blvd
Fort Myers Beach, FL 33931,

Respondent.

SITE ADDRESS: 1661 ESTERO BLVD
PARCEL STRAP NO: 194624W4004020010

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D. Batt

Code Enforcement Officer
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Property Address and Owner:

Hearing Date: September 5, 2024

Case Number: 20240316

Violation: Failure to maintain a property in safe condition or demolition

Code Section: LDC Sec. 6-111 - Adoption; amendments
103.5 Unsafe buildings or systems

Code Officer: D. Batt

Case closed. Matter transferred to Building Official's for further consideration under the Unsafe Building Code.

Subject:

The maintaining of a property with structure(s) in need of repair and/or demolition.

Code Section:

LDC Sec. 6-111 - Adoption; amendments
103.5 Unsafe buildings or systems

Reference Number:

20240316

Strap Number:

33-46-24-W2-0030D.0050

Officer:

D. Batt

Narrative:

Case Number: 20240316

Violation: Maintaining of a property in need of repair and/or
demolition

Code Section: LDC Sec. 6-111 - Adoption; amendments
103.5 Unsafe buildings or systems

Code Officer: D. Batt

Case closed as liability was transferred to the Building Official's authority

Attachments:

Town Recommendations:

Case closed as liability was transferred to the Building Official's authority

Town Approvals:

Thomas Yozzo, Operations & Compliance Manager

Date: August 27, 2024

nancy stuparich, Town Attorney

Date: August 29, 2024